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AUTOBIOGRAPHY:

*COLLATERAL REMINISCENCES, ARGUMENTS IN  
IMPORTANT CAUSES, SPEECHES, ADDRESSES,  
LECTURES, AND OTHER WRITINGS,*

OF

SAMUEL A. FOOT, LL.D.,

<sup>11</sup>  
COUNSELLOR AT LAW, AND LATE JUDGE OF THE COURT OF APPEALS.

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IN TWO VOLUMES.

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VOL. II.

ARGUMENTS, SPEECHES, ADDRESSES, LECTURES,  
AND OTHER WRITINGS.

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# PAPERS WRITTEN

BY

SAMUEL A. FOOT.

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No. I.—VOL. 1. p. 48.

*Nomination of De Witt Clinton for Governor.*

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*Resolutions Adopted by the Republican Convention held at  
Johnstown on the 5th of February, 1817.*

*Resolved*, That it is the clear and decided opinion of the electors of the Eastern District, that by the constitution of this state, the freeholders thereof, duly qualified, are entitled to elect a Governor at the ensuing election, if the seat of government becomes vacant by the resignation of his Excellency Daniel D. Tompkins, in consequence of his election as Vice-President; and that we consider such vacancy inevitable.

*Resolved*, As the sense of this meeting, that his Excellency the Governor, by a faithful adherence to his duty, and by his patriotic devotion to the interests of his country, has justly acquired the esteem and confidence of his fellow-citizens.

*Resolved*, That in electing a successor to his Excellency, we are called upon, by every consideration which can actuate the bosoms of patriots, to fix on an individual pre-eminent for his political experience, for abilities, for integrity of private character, and all those endowments necessary to the ruler of a great community; and that in the opinion of this convention the Hon. De Witt Clinton is the individual who most eminently unites in himself these qualifications.

*Resolved*, That coming from the various counties of this extensive district, and having freely conferred together, in announce-

ing to our fellow-citizens De Witt Clinton as the person best fitted to fill the chair of state, we speak almost the unanimous voice of our constituents.

*Resolved*, That it be earnestly recommended to the convention of the several counties of this district, to resist all the blandishments of intrigue, and to put in nomination for Governor the Hon. De Witt Clinton.

*Resolved*, That we will cordially support all fair nominations made by persons duly authorized by the people, and in which their opinions and wishes are fairly represented.

*Resolved*, That the Republican electors in the several counties of this State, not represented in the Legislature by Republican representations, have an inherent, unquestionable right to a voice in the nomination of a Chief Magistrate, and to send delegates, equal in number to the representatives of their respective counties, to a convention to be held for that purpose.

*Resolved*, That the chairman and secretary sign these resolutions, and that they be published in the Republican papers of this district, and in the Albany Register and Argus.

JOSEPH D. SELDEN, *Chairman*.

ABM. MORRELL, *Secretary*

No. II.—VOL. 1, p. 52.

*Nomination of James Kent, Ambrose Spencer, Stephen Van Rensselaer, and Abraham Van Vechten, as Delegates to the Constitutional Convention in 1821, and a Biographical Sketch of each.*

After the resolutions had been read, Samuel A. Foot, Esq., recommended and urged the adoption of them in an energetic and impressive address of considerable length. He fully and heartily concurred in the spirit which they breathed, and in the dignified and liberal sentiments which they expressed, and hoped they would be unanimously adopted. Although they were in themselves so explicit and satisfactory, and the gentleman who preceded him in addressing the chair had so eloquently discussed the subject to which they related as to leave him little to add,

yet his mind was so deeply impressed with the solemnity of the occasion on which his fellow-citizens had convened, that he could not forbear to make a few remarks, with a hope that an interchange of ideas might be beneficial. It was now forty-four years since the constitution, which was about to be amended, perhaps re-modelled, was established by the fathers of the state; and during that period it had undergone but one or two slight alterations.

A fabric thus venerable in age was endeared to us by a thousand interesting and pleasing associations. Under its protection, and with the smiles of Providence, the revolutionary fathers had achieved our independence and freedom; and it had thus far secured the rights and liberties of their descendants. Since its adoption, the state of New York had enjoyed a degree of prosperity unprecedented in the history of nations. She had risen to greatness and grandeur, and become one of the brightest stars in the American constellation—one of the proudest pillars in the American Union. The sails of her commerce have whitened every sea—her mariners were found upon every shore, and in every port upon the globe. Her agriculture had flourished with unexampled prosperity; manufactures had sprung up; the arts and sciences had been protected and cherished; and the advantages of education carried to the doors of the inhabitants in the remotest corners of the state. In short, the citizens of this state, under its present constitution, imperfect as it was supposed to be, had enjoyed an usual share of civil and religious liberty; and as they sat by their own firesides, in the bosom of their families, surrounded with peace and plenty, they had reason to thank God that they were citizens of a free country, and in possession of so many blessings.

Mr. Foot said that many changes had taken place in the condition of the state since 1777, which seemed to render some amendments in the constitution necessary and proper. He mentioned several of the alterations which had been proposed, but thought that this was not the proper time and place for discussing the propriety of such amendments. The object of this meeting was to promote the election of delegates to the convention, in whose hands the charter of our liberties would be safe, and to whom our invaluable rights and dearest privileges might

be confided for revision and improvement. A ticket composed of such candidates had been nominated, with a liberality of sentiment and a disregard to local feelings and prejudices which did credit to the members of the county convention. He could hardly do more than echo the encomiums which had been justly bestowed upon the individuals composing this ticket, by the gentleman who preceded him, and in the resolutions which had just been read; and yet could not do justice to his own feelings without dwelling for a few minutes on the pre-eminent qualifications of the four candidates in nomination, and spoke of them nearly as follows:

STEPHEN VAN RENSSELAER, rightly named and universally known as the "Patron of Albany," is a native of our county. Having inherited a large landed estate, occupied by a numerous tenantry, he has been distinguished for kindness and liberality to his tenants. No one is more popular and beloved in the manor of Rensselaerwick than the gentleman to whom the tenants pay their annual dues. Notwithstanding his great wealth and unequalled social position, he is affable, unpretending, and a favorite with all. We do not claim for Mr. Van Rensselaer brilliant talents of the highest order, but all concede to him thorough education, mature and cultivated scholarship, a clear, sound, strong judgment, a quick and keen perception of the proprieties of life and position, and a large fund of general information, especially upon all subjects affecting the interests of our state and country. His moral qualities are of the highest order. He has no superior in purity of life and inflexibility of integrity. He has always enjoyed the unbounded confidence of his fellow-citizens, and has never omitted the performance of a known duty. He obeyed the call of the Government, and entered the military service as a major-general of militia in the war of 1812; and when our state entered in earnest on the execution of her great project of internal improvements, he was one of the five gentlemen to whom the Legislature committed the conduct of this important undertaking.

These brief views of Mr. Van Rensselaer's character and qualifications show the selection of him as a delegate to the convention to be eminently proper.

JAMES KENT, chancellor of this state. Encouraged and sus-



tained, when surrounded by embarrassments, in the few first years of my profession, by a well-founded conviction that Chancellor Kent felt an interest in me, and desired my success, and assured this day of his friendship, I cannot on this occasion express a tithe of what a grateful heart from its fullness would wish to say of this pure and good man—this ripe and finished scholar—this profoundly learned and righteous judge. Appointed recorder of the city of New York in 1797, a justice of the Supreme Court in 1798, chief justice in 1804, and chancellor in 1814, he is identified with the judicial history of our state. His own judicial life forms a large portion of that history, and his labors and learning give its pages their chief ornament and value. These labors and this learning are not tarnished by pride of opinion, but beautified by wakefulness to discover and readiness to correct an error. All these high qualities of mind are accompanied by child-like simplicity of life and manners, and an integrity so firm and lofty that the prying and foul breath of slander has never dared even to approach it.

But my present purpose, fellow-citizens, is to direct your attention to the peculiar fitness of Chancellor Kent for the high trust for which he has been nominated.

His judicial duties for the last twenty-five years have required him to examine and study with care our constitution and laws. He has also held a position for the same length of time which connects him with the legislative department of our state government. I allude to his being a member of the Council of Revision. In discharging his duty in that position, he must have carefully examined every law passed during his term of service, for the purpose of determining not only whether it promoted the public good, but especially whether it violated any provision of the constitution. Hence, every clause of the constitution has been examined by him time and again. He must be as familiar with it as we are with the alphabet. No training could have better fitted him for the important trust of revising our constitution than the discharge of his official duties for a quarter of a century.

AMBROSE SPENCER, chief justice of our Supreme Court. This name is a tower of strength, politically, judicially, and morally. Judge Spencer, as we all know, is no quiet, gentle

lamb. In him we find a powerful intellect united with an ardent, active, restless spirit. He has been for the last twenty years not only an influential and active political leader, but also connected with the judiciary of the state, and during that period has contributed largely to the formation of the high character which it now sustains. He was appointed attorney-general in 1802, a justice of the Supreme Court in 1804, and chief justice in 1819. Being more active than studious, his opinions are characterized more by clearness and strength than juridical learning. Still he is by no means deficient, either in his knowledge of law or his acquaintance with reported cases and elementary treatises. He seldom, if ever, omits to make a few pertinent citations from approved authority to sustain his decisions. All agree that he is an able judge and a great man. He, too, as justice of the Supreme Court and member of the Council of Revision, has received the same training, though not for quite so long a time, as Chancellor Kent, for the important duty of revising our constitution. He is, moreover, familiar with the politics of the state, knows our leading politicians, their aims, and modes of accomplishing them, and will hence be able to exert an influence in the convention to defeat unwise and promote wise measures. His election as delegate to the convention will be fortunate for the State.

ABRAHAM VAN VECHTEN, though last named, and a private citizen, stands not low down, but among the first on the list of able lawyers and statesmen. He has a thorough knowledge of our constitution and laws. Besides an extensive practice at the bar, for many years, he has been a member of our Legislature for eighteen years—*first*, eight years a senator, from 1798 to 1805; *second*, six years a member of the Assembly, 1806 and from 1808 to 1812; and *third*, four years a senator, from 1816 to 1819; and one year, 1810, attorney-general. Mr. Van Vechten has not been a silent or inactive legislator or a mere office lawyer. Gifted with talents of a high order, a pleasant, ready, persuasive, and convincing oratory, an agreeable voice, manly figure, and genial manners, he has always held a high position at the bar, and been distinguished as a wise and influential legislator. Though not a violent partisan, he has always been regarded by his political friends as a wise and reliable adviser. To great

purity of life he adds unsullied integrity. He enjoys the confidence of the entire community, and deserves the character universally attributed to him of "An honest lawyer."

These outlines of his character and opportunities show him to be well qualified to discharge the duties of a delegate to the convention.

In conclusion, fellow-citizens, we have abundant cause of thankfulness that we have in this county four such gentlemen as those nominated as delegates to the convention. We can safely trust our dearest interests to their guardianship, and may rightfully congratulate ourselves in being represented by them.

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No. III.—VOL. 1, p. 72.

*Diary at Quebec, July, 1824.*

*July 1.—Thursday.*—On board steamboat Quebec, 9 o'clock A. M.—We came on board last night at half-past nine. Before leaving the Mansion, Mr. Gates called and gave me a letter to Quebec. He met me again at the boat, and introduced me to Mr. Mulson, a gentleman in extensive business at Montreal—the proprietor of the old Mansion House. He has an extensive brewery, and grinds his barley by steam-power. Mr. Quincy is yet with us. We are well accommodated. The ladies, Mr. Quincy, and myself have separate rooms. The rights of the company which supplied Montreal with water have been purchased by an individual named Proteus. He is a Scotsman. We had to come to anchor last night just after passing St. Helena Island, and when I rose this morning the island and Longueuil were in sight. We stopped at Berthier. It is a pretty village. There is a handsome Roman church there with two turrets and steeples. It fronts the river, and has a fine avenue leading from the river to it. The channel between the west shore and Isle du Pas is narrow, and the land well cultivated on each side. These make the sail down it charming. Two Catholic priests are in attendance at the church. On the north side of it there is a handsome

two-story stone building occupied by some sisters of the Convent la Congregation. They instruct young females. We have the very state-room, I presume, that Mr. Silliman and his friend had. (Sill., 205).<sup>\*</sup> We have but very few passengers. One Roman priest, but he cannot speak English. Silliman describes the shores correctly. (Sill., 202.) We have the west, and the town of Sorel is on the east shore.

*July 1, 10 o'clock P. M.*—We have passed Three Rivers. It appears to be flourishing. There are a new court-house and jail lately erected, as the captain told me. There is an Episcopal and Presbyterian Church in the place—two Roman chapels and a convent. The town appears to be thrifty.

*July 2.—Friday, Quebec.*—Mrs. Sturch's boarding-house.—We anchored before the town last night about ten o'clock. We staid on board during the night. The passage down was agreeable. We became partially acquainted with Mr. Hamilton, from the Upper Province, and with the Rev. Mr. Bedard, the almoner of the General Hospital of Quebec. There was great uniformity in the shores till we passed the Richelieu Rapids, as they are called. The water shows no evidence of being agitated. From there to a short distance above Cape Rouge, the banks are also uniform, being only a little bolder than those above. Just before reaching Cape Rouge, the distant mountains began to appear on the left. On the right, at this point, were Caldwell's upper mills. I shall remember them, his canal, and the Chaudière. Chaudière is "boiling pot." The view from the boat up through the valley of Cape Rouge was elegant. The valley is fertile, and apparently well cultivated. Beyond it lies a range of hills in bold outlines. The sun had just set as we passed. The flowing tide took us just above this place. It runs at the rate of four miles an hour. It runs up the shores three-quarters of an hour before it turns the current in the centre of the river. The tide prevented us from approaching Quebec by daylight. Silliman's account of the approach to Quebec (p. 207), as far as we could see, is correct. We could not discern all the objects he mentions. Sillery and

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<sup>\*</sup> This refers to Professor Silliman's Tour in Canada, of which I had a copy with me.



Wolfe's Coves were full of ships and lumber, but there were none at the mouth of the Chaudière. Plate No. 5 (p. 212) presents a correct view of the approach to Quebec.

*July 2, 4 o'clock P. M.*—Soon after breakfast this morning, Mr. Kent introduced me to Mr. Dean, an Irish gentleman. With him we went to the barracks, and he introduced us to Captain Carson and he to Lieutenant Gibson. Lieutenant G. took us to the armory, which is near the west end of the town. It contains about 40,000 stand of arms. They are put up on the plan of those in the Tower of London, and are in good order. After arriving at the armory, I went for the ladies. When we had viewed it we went to the parade ground, and saw the guard turned off. From there we returned to Mrs. Sturch's. The officers and Mr. Dean then left us, and we (the ladies, Messrs. Kent and Quincy, and myself) started for the ferry to go to the Falls of the Chaudière. After reaching the ferry, we gave it up. We then determined to go to the Plains of Abraham and Wolfe's and Sillery's Coves. This we effected after some adventures. We saw the spot where Wolfe was killed, and the place where he ascended the bank. We passed out of the city at the gate of St. Louis. The ride south from this gate for two or three miles is delightful. The view on the road is unequalled. The mountains at the N.W. heighten the grandeur of the scenery, especially the apparently little hillocks which lie irregularly scattered in a gap of the main mountain ridge. When we came back we rode from the gate of St. Louis around the walls to St. John street. The view all round was elegant, whenever we could see over the walls. Mr. Bedard informed us that the first establishment of the Jesuits in Canada was at Sillery's Cove.

*July 3, Saturday, 9 o'clock A. M.*—After tea last evening, we took a walk, partly round the town and next the walls. I cannot undertake to give an account of what we saw, as I am not as yet sufficiently acquainted with the various objects of interest to speak of them understandingly.

*July 4, Sunday, 10 o'clock A. M.*—Yesterday morning it rained till ten o'clock. Our party assembled in the drawing-room after breakfast, and spent an agreeable hour in reading Silliman, and conversing. As soon as the rain ceased, Mrs.

F. S., Mr. Kent, and I, started for the Falls of the Chaudière in a carriage. We returned a little after eight o'clock P. M. The ride was highly interesting. There was a series of most interesting views. Silliman's account of a visit to these falls is in the main correct (p. 248 to 259). The view taken by his pencil at the mouth of the Chaudière is incorrect in three particulars, viz. :

1st. He omits the cap of a beautiful distant conical mountain behind Cape Diamond.

2d. The mountains behind the shores of Beaufort are not as prominent as they ought to be.

3d. The rock on the north side of the Chaudière is too conspicuous and bold.

There were no ships in the mouth of the river yesterday, though it forms an excellent little harbor. Caldwell's lower mills, which are mentioned by Silliman, are on the river or creek Echemin. The dam forms a bridge, or rather road, which is planked and under water. There is an actual bridge at the brow of the dam for pedestrians. In addition to Silliman's remarks (255-278) on the geology of the Chaudière, I well remember the singular dip of the rocks at the falls, and from these to the mouth of the river. They lie at an angle of about  $45^{\circ}$ , and the inclination is up the river. At the falls the strata appear to be laid by design, and on purpose to obstruct the current of the river. On our return I rode the outside of the carriage on the box, and had continued views of Quebec. I now know that Mr. Silliman's description on the approach to Quebec, and his plate connected with it, are correct. When we crossed the ferry yesterday we landed about three-quarters of a mile south of the point, or farthest projection of land on the bank opposite the city. This enabled us to see the buildings on the main avenue to the upper town. If we had been at the point, it is probable the town would have appeared as presented in the vignette of Silliman's Tour, unless additional buildings have been erected since 1819 on the avenue mentioned.

*July 4, 5 o'clock P. M.*—We went to the Episcopal Church this morning. It came out at twelve. This afternoon we have been to the Roman Catholic. We were in church before service began, and saw a Sunday school under instruction. I shall easily remember the service. It was in French, and chiefly consisted

in action and sound. The music is wildly barbarous. The whole forms an address to man, as a sensitive and religious being, in his natural state. Every human being cannot but be more or less affected by the service. The Rev. Mr. Bedard called to see us yesterday. This has been rather an unprofitable day to me thus far, though I have held some interesting communication with my Creator.

*July 4, 10 o'clock P. M.*—After tea this evening we walked to the parade ground to hear some music. Mr. Spence walked with Mrs. Foot and me. He is a gentleman who boards at this house.

*July 5, Monday, 4 o'clock P. M.*—Soon after breakfast this morning we started to view the General Hospital. Messrs. Kent and Quincy were with us. We found Mr. Bedard there. It is in charge of fifty nuns of the order of St. Augustine. They take in and support poor invalids, also the insane who are destitute. There were many persons of this description of both sexes in the hospital. It was founded in 1693 by M. de St. Vallier, bishop of Quebec. He was the second bishop of Quebec. He lies on the east side of the chapel of the hospital. Over his tomb hangs his portrait. He gave a large property to the establishment, which lies in France. During the revolution it was sold. Since the Restoration small annual remittances have been made. All this from Mr. Bedard, the chaplain. We went through the establishment. I shall remember the chaplain's sitting-room, study, and dormitory; also the preparation made by the nuns for drawing the curtains. We had an audience with the abbess. Grates were between us. Mr. Bedard went with us to see the chapel in St. Rock, and introduced us to Mr. Obey, the superior, and Mr. Peaslie, the assistant minister. We were shown the whole apartments. Among others, the bishop's audience-chamber. There was in it a good portrait of Pope Pius VII., and engravings of various scenes which occurred while he was in captivity in France. The gentlemen were all very polite to us. On our return, Mr. Henry Black called to see us. He is the partner and friend of Andrew Stewart.\* He and Mr. Spence accompanied

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\* I met Mr. Stewart at the Clinton County Circuit in, I think, the year 1818, and became acquainted with him.

our party in a walk on the summit of Cape Diamond. The views in all directions are magnificent. I am unable to describe them. They extend in all directions almost as far as the eye can reach. Mr. Silliman's account of the fortifications of Quebec (271 to 278) is substantially correct. The government are erecting vast fortifications on the summit of Cape Diamond, which enclose Brock's Battery. This is nearly taken down, and will be altogether. I shall easily remember the bastions, curtains, barracks, subterranean apartments, and passages. Mr. Spence had a card, but was not asked to show it.

*July 6, Tuesday, 7 A. M.*—Last evening we visited the Hotel Dieu, but were so late that our visit was unsatisfactory. There are five gates. Prescott, leading into the lower town; Hope, leading into the same and St. Rock suburb at the N.E.; Palace, leading into St. Rock suburb; St. John, leading to suburb of St. John; and St. Louis, leading to suburb of St. Louis.

*Tuesday, 4 o'clock P. M.*—Soon after breakfast this morning, Mr. Black called and walked with Mr. Kent and me to the St. Louis Square and along by the Governor's Gardens. The walk from the palace south is beautiful. We then went to the Court-house, and entered the various court-rooms, also some of the rooms connected with them, particularly the wardrobe of the judges. The building occupies three sides of a square; is new and neat. Mr. Black then took us to the Parliament House. We examined the assembly room, the wardrobe of the members attached to it; also the Speaker's room, and the library of the assembly, or public library. There was a collection of beautiful engravings in the Speaker's room; also a considerable collection of books. The library is as yet small, but is good as far as it goes. We also entered some committee-rooms. Without going into detail, I may say that the whole establishment shows royalty, wealth, neatness, and propriety. Mr. Kent and I then took leave of Mr. Black, and went and viewed the seminary. This is a noble institution. The Bishop's palace and a chapel are connected with it. The former appears to be, and probably has been, recently built. The Parliament House was formerly his palace, but is now rented by Government. I shall easily remember the formation and extent of the garden and buildings of the seminary, and the objects of the establishment.



After viewing the seminary, Mr. Kent and I returned, took the ladies, called for Mr. Black, went to the Parliament House and examined the Council Chamber. Its interior will be long remembered, especially the throne and crown on it. We then viewed the library of the Council. The collection is in its infancy. We then went with the ladies to the assembly room. After that to the chapel of the seminary. It is hung around with magnificent paintings, which have been mostly obtained from France and Italy within two years past. Two of them were given by the late Pope to the Bishop of Quebec. I shall well remember *The Baptism of our Saviour*, *The Worship of the Wise Men*, and *Our Saviour on the Cross*. These three are striking. I shall examine the whole again. Mr. Black left us after we had viewed the paintings, and we went to the Convent of the Ursulines, looked at them through the grates, and bought some articles. They are forty-nine in number. I have learned in the course of the day that the Provincial Court of Appeals is composed of the Executive Council. In our walk to-day we met Edward C. Delavan and his wife.

*Tuesday Evening, 9 o'clock.*—Messrs. Kent and Quincy left us this evening—Mr. Kent for Plattsburgh, and Mr. Quincy for home.

*Wednesday, July 7, 7 o'clock P. M.*—This forenoon, immediately after breakfast, I went to the Island of Orleans in a pilot-boat. A Mr. Hamilton, of Queenston, went with me. After viewing the ships and walking awhile on the Island, I went to Montmorency Falls. After viewing them I met Mrs. Foot, Sarah, and Mr. Black, who, by previous arrangement, were there in a carriage. Mr. Black introduced to us a Mr. Barton, of Ireland. He rode home with us. The great ship is an immense batteaux. The views of Quebec and the surrounding country, as I passed to the island and from it to Montmorency, were truly magnificent. I viewed the battle-ground of the 9th of July, 1759. Silliman's account is correct (236-248). His account of Beauport and Montmorency (219-224) is substantially correct. So, too, is his account of the falls and the print No. 7 (225-230). I had a beautiful view of these falls as I approached the Island of Orleans. Their top was first seen, and appeared like a rich white cloud hanging on the brow of the precipice. This was also the appear-

ance of the Niagara Falls on the American side when we first saw it on our side up the river from Lewiston. I visited the lumber establishment at the bank of the St. Lawrence. Mr. Silliman's account of it is imperfect. I shall remember all the particulars—viz., the fifteen saws, uppermost set of wheels, the lower set, the course of the duct, the docks, piers, and boom. I took a view of the Falls of Montmorency at three positions: one at its base on the south side of the river, one on the bank on the north side, and one on the bank of the precipice at the margin of the water on the south side. I climbed from the bottom to the top of the bank. This enterprise will be long remembered. The view of the scenery from the north bank was inimitable.

*July 8, Thursday, half-past 11 A. M.*—I have just returned from a delightful walk alone. I went down to Hotel Dieu, then to the wall round and down Prescott Gate, down the lane, up Champlain street, up Inclined Plane, all over the summit of the Cape, and home by the Esplanade. The atmosphere was clear, and the views charming. I have now a correct idea of the new fortification. It is to be immense. The whole works are so strongly impressed on my mind that I need not put down particulars. In my walk I saw where Montgomery fell and Arnold was wounded. This I did by the aid of Silliman (282-291).

*Three o'clock P. M.*—I have just returned from a long walk with Mrs. Foot, and Sarah part of the way. We all went to the palace of the Governor, walked on the piazza, and through the gardens. Mrs. Foot and I then went to the chapel of the seminary. Viewed the paintings there again. I observed especially the two of St. Jerome, the one of Abraham and the angel, the ascension of our Saviour, the Holy Family behind, or rather over, the altar of the church, and the entombing of our Saviour. The descent of the Holy Ghost did not appear to be well executed. The three pictures I noticed the other day still appeared superior to the others. There was one other piece, all the figures of which were angels, save one, and that was a female. The execution of this piece was good, but not understanding the scene, I could not judge of its excellence. We went to the Cathedral also, but saw nothing interesting, as the church is being repaired, and the paintings are removed, or covered. Mr. Black met us on his way to visit the ladies.

*Thursday, 7 o'clock P. M.*—Just before dinner to-day we visited the chapel of the Ursulines. The paintings are splendid, at least one or two of them, viz., the washing of our Saviour's feet, and his being betrayed by Judas. The chapel is superior to any we have seen. We leave this evening for Montreal.

*Letter from Mrs. Foot to her Parents.*

NIAGARA FALLS, *June 12, 1824.*

(AT MR. FORSYTH'S INN, UP. CANADA.)

MY DEAR PARENTS,—We arrived here this morning at ten. Presuming you have reached home and read the letter, I wrote to James from Auburn. I shall commence this where I left off in his. After finishing that letter we went to church with Mr. Porter. Returning to the tavern, we met Mr. G. B. Throop, an old acquaintance of Mr. Foot's. He was surprised to see us, and appeared quite provoked with Porter for not having informed him of our being in the village. Judge and Mrs. Throop, with Mr. and Mrs. G. B. Throop, called on us in the evening. They were sorry, as they said, because we did not stay long enough in the village to visit them. Mr. Theodore Spencer also called in the evening.

*Monday Morning, June 7.*—Mr. Porter and sister took us to view a little fall of water in the neighborhood of Auburn, also to see the state prison in Auburn. I was much surprised at the neatness of the whole place. The convicts all looked pale, but healthy. They were all dressed alike. It looked very melancholy to see some of them standing in their cells reading the Bible. Most of them were engaged at work. We went into the belfry, also walked all round the guard wall. We left Auburn about twelve A. M., and arrived at Waterloo about three P. M. At Cayuga village we crossed the Cayuga Lake on a bridge one mile in length. At Cayuga village we stopped to water the horses, and Mr. Foot came across a couple of cousins. We reached Geneva quite early in the afternoon, took a walk through the village before tea, and in the evening Sarah and I called on Mrs. Hall. I was very much disappointed in the appearance of the village. The location is fine, being situated on

Seneca Lake; but the village had not the air of neatness which I expected to find. The next morning, instead of taking the direct road to Canandaigua, we turned off to the north, and went through the town of Phelps, and by the Sulphur Springs in the town of Manchester to that place. The innkeeper had written on his sign "Sulphur Springs," which we found to be unnecessary, as the odor assailed our noses before we saw the house. We reached Canandaigua at half-past twelve p. m., and in the evening took tea with Judge and Mrs. Howell. Wednesday morning we left Canandaigua at five o'clock, and arrived at Caledonia at five p. m. This was a momentous day for us. Soon after crossing the Genesee river at Avon, and while on the flats in the Indian territory near the village of a part of the Seneca tribe, we were stuck in the mud, or rather the carriage and horses were. We got out of the carriage and walked to the Indian village. Sarah and I went with a squaw a mile from where the carriage was, alone, to her hut, and waited till Mr. Foot called for us. We were there nearly three hours. Do you not think we were quite courageous? The squaw could not speak a word of English. We left Caledonia after breakfast Friday morning, and reached Williamsville, in the town of Amherst, at seven in the evening. At Batavia I saw Mr. Phineas L. Tracy, Mr. Dorr's cousin. He has as pleasant a situation as I saw in Batavia. We left Williamsville at seven a. m., and reached Buffalo at about nine a. m. Here we saw Miss Norton, a cousin of Alfred's. We staid at Buffalo to dinner, and in the afternoon we went to Black Rock, and from there crossed over to this side. Mr. Foot had to pay duties on the horses. After crossing from Black Rock, we rode up to Fort Erie. The ride from there to this place is beautiful. We stopped Friday night at a place, Willoughby, about eleven miles from here. We left Willoughby this morning after breakfast, and arrived here about ten a. m. Found some company—three ladies and one gentleman from Boston, one or two Englishmen, and several Americans. It rains to-day, so I shall not be able to view the Falls to-day. Mr. Foot has, notwithstanding the rain. He is very much pleased.

*Sunday Evening.*—Went to an English church this morning. There being but one service, I was tempted, after dinner, to view the Falls. Sarah had a headache, so that she could not go. She,

however, went afterwards with Mr. Foot. They are much larger than I had any idea of. We went quite down, and viewed them from the bottom. You have no idea of their height until you get down and look up to the top. We descended the stairs at Table Rock, and came up there, which are down the river about one hundred rods. They appeared to advantage to-day. The rainbow was perfect. It followed us as we passed up the river from Table Rock. The colors of the bow were often presented on the spray, without any appearance of the arch. We hope to-morrow to visit the battle-grounds, and cross over to the American side. Sarah is very busy writing. She was not able to write last week, as we were kept very busy. Let James\* read this letter. Say to him, if you please, he may expect a letter from me next week, if life and health are spared. We all send our best love to you, and hope to receive a large bundle of letters at Ogdensburgh. The letters I send home contain my journal; therefore you will oblige me by preserving them. Sarah said to-day she wanted to be here, but still she would like to see home and all of you. We all feel so. Alfred has gone to view the Falls by moonlight. I presume they look very well, but for my part I would prefer to look at them when the sun shines.—Your affectionate daughter,

MARIAM.

*Letter from Mrs. Foot to her Parents.*

QUEBEC, July 6, 1824.

MY DEAR PARENTS,—We received letters from home while at Montreal, but have not had time to write until to-day. We have been kept continually busy looking at one thing or the other all the time. To-day we intended to have visited the Falls of Montmorency—are prevented in consequence of the rain. You probably received two short letters from me—one informing you of our safe arrival at Sacketts Harbor; the other from Ogdensburgh of the same import. The last one, containing my journal, I sent from Rochester. I will therefore now continue my journal

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\* James Edwards, my nephew and partner.—S. A. F.



from Rochester. We took the stage at Rochester, and rode to Handford's Landing, about four miles, and then went on board the steamboat, sailed down the Genesee river four miles before we entered the Lake. Our visit at Sacketts Harbor, I believe I informed you of in my letter from that place. We left the Harbor in the evening, and arrived the next afternoon at Ogdensburgh. The sail down was delightful. We rose early, and saw all the islands. We arrived at Ogdensburgh time enough for dinner. After dinner we rode up to Black Lake; stayed over night; went a fishing the next morning, and after dinner left the Lake with Mr. and Mrs. Davies and Eunice for Ogdensburgh. The next morning, June 26th, we (I mean by we, Mr. and Mrs. Foot, Miss Fowler, Mr. Moss Kent, and Mr. Quincy) went on board a Durham boat, with a box of provisions destined for Montreal, expecting to arrive at that place the next morning, when, on the contrary, we did not reach Montreal until the Monday following at eight o'clock A. M. The sail down the rapids was magnificent. We went down all of them. I shall not undertake to describe my feelings while passing through the several rapids. On Sunday we stopped at St. Regis, and visited the Indian chapel. They appeared very devout. After the ceremony we followed them to an Indian hut, where there was a sick Indian. They all walked in procession, with their priest at their head, and on each side of him walked an Indian boy with a surplice on, each holding a candle and candlestick. The Indians and squaws followed, wrapped in their blankets. The priest and his attendants went into the hut, and the others all kneeled around it. It appeared solemn. Our accommodations on our way from Ogdensburgh to Montreal were miserable. I mean only at night, for while we were on the boat it was pleasant. Mr. Foot and Sarah, after breakfasting at Montreal, went to see a nun take the veil. Mr. and Mrs. Ogden called the same morning to see us, and invited us to tea the next evening. I believe I mentioned in my letter from the Harbor, the English gentleman we saw at Niagara Falls came down Lake Ontario with us. He left us at Ogdensburgh, and met us again at Montreal. He invited us to visit the Cathedral with him after dinner (which was at seven, as they do not dine here till five o'clock). I never was in a place which appeared to me so awful. Almost the first thing you



observe in the chapel is a statue of our Saviour on the cross. This cathedral is one hundred years old. They are about erecting a new one, and taking this one down. The next morning (June 29th) Mr. Sewell called, and took us to see several public buildings. Mr. Ogden accompanied us. We also went to the parade ground. This morning Mr. Kent left us for Quebec, we not wishing to leave Montreal so soon. Mr. Quincy stayed. After viewing the public buildings, we took a carriage and went on the Mountain. It gave us a fine view of the country. In the evening we took tea with Mr. and Mrs. Ogden. Met there several ladies and gentlemen. Amongst the latter several officers. Wednesday we visited the nunneries. We were all highly gratified with the neatness of them. One of the nuns took so great a fancy to us as to propose we should be presented to the lady abbess and her assistant. We, of course, were pleased with the proposal, and followed her to the audience-chamber. I never saw so graceful a person in my life. She could not speak English, but her assistant could. They took us all over the establishment, except into their cells, which is against the rule. They gave us a delightful drink, and we then took our leave of them. This evening (Wednesday, June 30th) we left Montreal for Quebec in the steamboat Quebec, and arrived here Thursday evening. On board this boat we became acquainted with a priest attached to the General Hospital, belonging to the nuns of the order of St. Augustine of Quebec. He could not speak English. The captain was our interpreter. On Saturday he called on us, and invited us to visit him on Monday. We went. He gave us some cake made by the nuns, and something to drink. We then went into the chapel, the curtain was drawn, and through the grates we saw several nuns at prayers. Here we were also presented to the superior, and saw a number of nuns. You must not understand we were presented in the chapel, but in the audience-room. A grate was between us. The priest, after showing us everything worthy of our notice here, took us to St. Rock suburbs to see the chapel of St. Rock and the priests' dresses. They were splendid. The same morning we visited Cape Diamond, and went into the subterraneous passage. We do not dine at this place until after five o'clock. Before telling you this, I should have mentioned that on Friday, July 2, we visited the

Plains of Abraham and Wolfe's Cove, and saw the place where Wolfe died. In the evening we walked round the town. Saturday we went to the Falls of Chaudière. Sunday, in the morning, went to the Established Church, and in the afternoon to the Cathedral. You must wait patiently for particulars until we meet. We are all well and in good spirits.—Yours, most affectionately,

MARIAM.

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No. IV.—VOL. 1, p. 75.

*Navigaton of the Hudson.*

Upon no subject have our citizens a better right to exhibit a deep feeling than upon that of the navigation of the Hudson. It may be impossible to impart the same degree of feeling to others, for it is not easy fully to appreciate the disadvantages under which they labor, without a personal observation and knowledge of them; but we trust that sufficient interest in the question will be taken by the Legislature, to aid in removing the obstructions which form so serious an impediment to the navigation, not only from this city, but from the places above. As an object of public as well as of local advantage, it presents strong claims to the legislative interference, the necessity of an early attention to which is considerably increased by the constantly increasing alluvial formations between this city and New Baltimore. The following information upon this subject, in addition to the detailed statements laid before the last Legislature, is copied from a memorial of the Chamber of Commerce of this city, presented to the Senate on the 13th instant by Mr. Dudley.

## No. V.—VOL. 1, p. 75.

*To the Honorable the Legislature of the State of New York, in  
Senate and Assembly Convened:*

The memorial of the citizens of Albany and its vicinity, on the subject of improving the navigation of Hudson river below that city, respectfully represents:

That the citizens of Albany, Troy, Auburn, and Rochester, presented memorials on this subject to the last Legislature, and urged the importance of giving it early attention. They were referred, in the Senate, to the committee to whom was referred that part of the Governor's Message which related to the same subject. The committee reported in favor of carrying into effect the contemplated improvement, and introduced a bill for that purpose. Some diversity of opinion, however, existing, as to the best mode of effecting the object, and other subjects of deeper interest occupying the Legislature, a law was not passed. The citizens of Albany and its vicinity stated, in their memorial, the extent and rapid increase, for the last few years, of the impediments to an easy and regular navigation of the Hudson between that city and New Baltimore; the injurious effects of these impediments to the commerce of the state; their probable causes; and suggested a plan for their removal. The memorial is now on the files of the Senate, and the attention of the Legislature is respectfully requested to it, and to the report of the committee before-mentioned. Your memorialists beg leave to present some additional views of this subject to the Legislature, showing, if possible, more clearly the necessity and importance of not allowing the present session to pass without making an adequate appropriation for the improvement required.

The navigableness of this noble river early arrested public attention. In the year 1796, the Legislature made a liberal grant of money to improve it above the city of Albany: and that grant has been followed by almost annual appropriations to the same object until the year 1817, at which time the era of internal improvements, upon a grand scale, began in this state.

In the year 1803, an appropriation was made for removing

obstructions, and improving the navigation in Hudson river below the city of Albany. Several other appropriations of the same kind have been made since that time—small, however, in comparison with those for the improvement of the river above that city. These appropriations were inadequate to the object in view. They produced only temporary relief; the permanent obstructions remained. Since 1817 a different course has been pursued.

The canal commissioners have adopted and executed, above Troy, a plan of improvement proportionate to the importance and difficulty of the navigation. They have expended \$200,000 and upwards of the public money on works in the river and upon its banks in the vicinity of Troy, Lansingburg, and Waterford, and for their benefit. During that period no portion of the public property has been applied to objects particularly beneficial to the city of Albany. Her citizens have only shared in the general prosperity of the state. They have not even asked a favor from the treasury. On the contrary, they have voluntarily contributed their individual funds to construct a basin in front of their city, at an expense of \$110,000 and upwards, for a termination of the grand canal, and on a scale commensurate with its magnificence and importance.

The increasing commerce on the Hudson now requires legislative aid to improve the navigation below this city. An impartial distribution of the public money, for local objects, appears to require a liberal grant for this purpose. Considerations of a more general nature show the propriety and necessity of the measure. By the erection of the dam and lock above Troy, sloop navigation is furnished to Waterford. This is useless, and the money expended to effect it, wasted, unless there is a free navigation below. Albany alone will not be benefited by the contemplated improvement. The towns on the river above would share in the advantages. The obstructions intended to be removed are alike embarrassing to all. They as frequently detain the sloops from Troy, Lansingburg, and Waterford, as those from Albany. The experience of the last two years has convinced all candid observers that the principal part of the produce which will be brought from the interior in our canals, will follow them to their termination. The spacious basin at Albany must be the great

depository of canal boats—the chief place of transshipment. It has been a prominent feature in our plan of internal improvements to carry artificial navigation to a point on the Hudson at which it would meet free natural navigation. The necessity of this is manifest. In truth, it has been the principal object sought. Our system of inland navigation would be imperfect, and comparatively useless, without it. The same reasons which have induced the state to expend millions in canals, ought to produce an adequate appropriation for the contemplated improvement. There will probably never be a time so favorable as the present for effecting this desirable object. There is an abundance of unappropriated funds in the treasury, and the state contains many citizens of skill and experience in executing projects of this kind, who could devote their time to this object with great advantage, skill, and ability.

This is a work which must be done in time, and the inconvenience and embarrassments which its delay occasions to the commercial interests of the state, immeasurably exceed the value of the interest of the money which would be required to complete it.

The memorialists, therefore, submit to the Legislature the propriety of passing a law at the present session for improving the navigation of the Hudson below the city of Albany.

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No. VI.—VOL. 1, p. 85.

*Revue Encyclopedique, and Canal from Boston to the Hudson.*

Messrs. EDITORS,—The views entertained by foreigners of this country, and of our various projects for improvement, being interesting to all classes of readers, I take the liberty of sending you a translation of some remarks in the number for May, of the *Revue Encyclopedique* published at Paris, on the subject of the contemplated canal between Boston and the Connecticut and Hudson rivers. And I avail myself of this occasion to say, what has often been said before in different publications in this

country, that the *Revue* is one of the ablest and most useful productions of the present day. Although there may not be among the contributors to its pages a master-spirit like Jeffries, there are, however, a large number of distinguished scholars in each department of literature, the sciences and the arts, who devote a great portion of their time to its service, and supply, by variety of talent and learning, the want of the pre-eminent endowments of the *Scotch Reviewer*. It is also one of the cheapest works of the kind now published. A number containing upwards of 500 pages is published every month, and furnished to subscribers in this country for \$1. Every person who can read the French language ought to look into its contents, and if they have not time, or do not wish to read all the articles, to select such as are most useful and entertaining.

A. B.

“Report of the commissioners of the commonwealth of Massachusetts on the construction of a canal between the port of Boston and the Connecticut and Hudson rivers. Boston, 1826, 8vo, pp. 185, with an Appendix, pp. 62, and a map.

“Every work which the United States execute, to promote their prosperity, gives us additional knowledge of their country, important statistical data, and valuable suggestions on political economy. The project of a canal between the port of Boston and the Hudson river, to unite with the canal of the great lakes, furnishes a new occasion to consider the motives for undertaking these great commercial avenues—these monuments worthy of a wise nation which does not lavish its resources in the gratification of its vanity. This report shows what are the wants of an active and rapidly-increasing population, and the certainty of their being abundantly supplied with the aid of new outlets and easier modes of transportation: it shows, in one word, that the government is guided by elevated considerations of public good, and that its intentions and views are fully seconded by those who are charged with the execution of the projects.

“The canal will unite with the Hudson river at Waterford; and boats on the Erie canal will enter it by passing a few miles on the Champlain canal. The distance between Boston and Waterford is 178 miles. The expense is estimated at \$2,700,000. The difficulties of executing the work are sufficiently great,



for the canal must be cut several times through very hard rocks.

“Mr. Laommi Baldwin, the engineer who made the surveys, says nothing of the nature of these rocks, nor was it necessary that he should, for a mineralogical description of Connecticut had already been published; but Epaphras Hoyt, the principal engineer, who also surveyed the route, has discovered a curious fact which the mineralogists have not mentioned; it is a rocking stone in the bed of the Deerfield river. This stone, however, is one of the smallest of those which possess mobility, its diameter being only about six English feet. It may be here remarked, that the number of these rocking stones appears to be greater in the countries of North America, than in any other parts of the earth.”

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NO. VII.—VOL. 1, p. 85.

*Trial by Jury in Ceylon.*

FOR THE NATIONAL OBSERVER.

ALBANY, Dec. 6, 1826.

MR. SOUTHWICK,—While looking over the July number of the *Revue Encyclopedique*, I met with an account of the introduction of the trial by jury into the benighted Island of Ceylon, where religious superstitions of the grossest kind have held the mind of man in bondage for many centuries. The fact that such a measure had been adopted was new to me; and I was induced to read the whole article, and was richly rewarded for my time. Few projects of the present century for ameliorating the condition of the human race have produced more benign results. These results demonstrate the practicability of raising the immense mass of eastern population from the degradation in which it is now sunk, by the application of proper means; and that probably no means can be more efficacious than to give them a part in the administration of the laws, and thus show them that they were created for higher and nobler purposes than to minister to the vices and folly of a crafty priesthood, and to the insatiable

cupidity of an organized band of plunderers, who rob them under the forms of law.

I have translated the article for my own amusement and instruction, and send you the translation for publication, if you think it, or any part of it, worth a place in your paper.

A. B.

[Translated from the number for July of the *Revue Encyclopedique*, published at Paris.]

#### ON THE ESTABLISHMENT OF THE TRIAL BY JURY IN THE ISLAND OF CEYLON.

We have before us a letter, written on the 26th of May, 1825. by Mr. Alexander Johnston, chief justice of the Island of Ceylon, to Mr. Wyn, president of the board of control for the affairs of India at London. This magistrate, whose intelligence equals his philanthropy, has given an account of the introduction of the trial by jury into the English colony, and of the happy effects which have already been produced by this admirable institution. Believing that nothing would show more evidently all the advantages attending it than a relation of the facts, which are stated with clearness, we have thought that, in communicating them to our readers, we should perform one of the duties which we have imposed on ourselves, viz., to communicate from time to time the progress of civilization in all parts of the world, and at the same time show the possibility of participating in the improvements of foreign countries, or the necessity of such participation.

LONDON, 26th May, 1826.

SIR,—You have expressed a desire to know the plan which I adopted for introducing the trial by jury into Ceylon, when I held the offices of chief justice and first member of his Majesty's council in that island. I will gratify you with pleasure, and show you how the right of sitting as jurors was conferred, as well on the natives of the *demicast* as on the inhabitants, born in the country, of every cast and religion. I will also explain to you the motives which induced me to propose this plan, the manner in which it has been executed, and the results which have been obtained.

The judicial system of the island was tardy, expensive, and unpopular. The great defects of that system were attributable to the little importance which the natives attached to a character for veracity—to the little interest which they took in the administration of justice, which they left wholly to foreigners—to the difficulty which the European judges, who were obliged to pronounce on the facts, and at the same time apply the law, encountered in ascertaining the degree of confidence which could be placed in the testimony of the natives—and to the slowness of legal proceedings, which was attended by the double inconvenience of detaining the witnesses a long time at court, and of causing heavy expenses to the government. There were several means which it was necessary to use in remedying these defects in the administration of justice. It was necessary, in the first place, to interest the natives, by bestowing a large portion of it on them; secondly, to render truth estimable by accustoming them to consider it an indispensable qualification for obtaining the good opinion of their fellow-citizens, or employment under the government; thirdly, to appoint the natives themselves judges of the fact—as the knowledge which they had of the character of their own countrymen rendered them more capable than strangers of appreciating the value of their testimony—also, to shorten the time of the trials, so that the witnesses might be relieved from a long attendance at court, and the great expenses of the government diminished. The introduction of the trial by jury at Ceylon, and the extension of the right to serve as jurors to all the natives, with some few exceptions, appeared to me the best mode of effecting the object in view. I consulted the principal ministers of the religion of Boodh concerning the interests of the Cingalese in the southern part of the island, and the Brahmins of Remissura, Madura, and Jafria, concerning the interests of the Hindoos in the northern part. I submitted my plan afterwards to the governor and council of the island. Sir T. Maitland, who was then governor, and the other members of the council, considered the adoption of my plan an object of great importance in respect to the prosperity of the island; but they feared that the proposed plan would meet with objections in England, because no rights had been granted to any of the natives of India of the kind which I asked for the natives of

Ceylon. I was therefore sent on an official mission to England, in my capacity of first member of the council of the island, with full power to urge the adoption of the measure, with such modifications as his Majesty's ministers should judge necessary after they had considered the subject. After the project had been thoroughly examined in London, a charter was granted under the great seal to the natives of Ceylon, which conferred on them the right of sitting and judging as jurors in criminal causes according to the plan which I had proposed, and on my return to Ceylon in 1811 measures were taken to carry it into effect.

To give you an idea of the manner in which the trial by jury has been introduced among the natives of Ceylon and the inhabitants constituting the demi-cast, I ought to inform you, first, of the conditions on which a native can be one of a jury; secondly, how the jurors are summoned at each session of the court; thirdly, how they are chosen for each trial; and, fourthly, how they form their opinions and pronounce their verdict. Every native of Ceylon, who is free, twenty-one years of age, and a resident of the island, is qualified to serve as a juror. As soon as the time of holding a court in a county is fixed the sheriff summons a great number of jurors of each cast. He is very careful not to summon a juror out of his turn, nor when his business would render it inconvenient for him to leave home, nor when the presence of the men of his cast are required at any religious ceremony. At the opening of the court the names of all the jurors who have been summoned are called; those who appear take their seats with the magistrates and police-officers, and the judge then addresses them on the subject of the offences which they will be called to try. The criminals are next presented and arraigned. Each one has the right of being tried by thirteen jurors of his own cast, unless the prosecuting attorney, who performs at Ceylon almost the same duties which the lord-advocate does in Scotland, is able to assign satisfactory reasons for depriving him of his right, or unless the accused himself, fearing the prejudices of a part of his own cast, should demand a jury of another cast, or of the half-cast, or of Europeans. After the cast which ought to furnish the jury is definitively settled, the clerk of the court puts into an urn, which is placed so as to be near the whole audience, the names of a great number of the jurors of the cast from which the jury is to be

taken. The accused is entitled to five peremptory challenges and to an indefinite number for cause, when thirteen unexceptionable names have been drawn from the urn; each juror takes an oath, according to the forms of his own religion, to decide the cause justly and impartially. The prosecuting attorney opens the case to the court (and by an interpreter if necessary), and proceeds to call all his witnesses. The judge receives their testimony in the presence of the jury, and also with the aid of an interpreter if needed. The jurors have the right of examining, and the accused of cross-examining the witnesses. When the prosecutor has established the charge, the accused opens his defence and produces his witnesses. Their testimony is also taken by the judge; the jurors exercising the right of examination, and the prosecuting attorney his, of cross-examination. Seldom, and never unless under extraordinary circumstances, is the prosecutor allowed to reply, or introduce further testimony. The trial is closed with the defence, and the judge then recapitulates from his notes, to the jury (and with the aid of an interpreter, if required), the results of the testimony, and adds such observations as he thinks useful. The jury, after having deliberated together, either in their seat or privately in their room, deliver their verdict by their foreman in open court. The verdict is formed by the opinion of a majority of the jurors. Great care is taken to prevent them from separating or conversing with any one, from the time they are sworn until their verdict is pronounced and publicly recorded by the clerk.

The number of the natives of every cast who are qualified to serve as jurors is so great, and there is so much uncertainty in respect to those who shall compose a jury, or what may be their character, that it is almost impossible to influence or corrupt them. The number of jurors summoned by the sheriff at every session of the court, the impartiality of the selection by lot, the right of challenge exercised by the accused and the public prosecutor, and the particular care which the court takes to prevent the jurors, after they are sworn, from communicating with each other or third persons, give great weight to their decision.

The natives now decide the questions of fact, and consequently the European judges have only to expound and apply the law. This division of judicial functions renders it unneces-



sary for more than one judge to attend trials by jury, while two or three are required when they performed both duties. The native jurors, knowing what reliance may be placed on the testimony of the witnesses, decide questions of fact with more accuracy and promptness than the Europeans. Since, too, the introduction of the jury, not more than one day is consumed in the trial and decision of a cause, nor more than eight or ten days in the session of a court; when heretofore a trial sometimes continued six weeks or two months, and a session of the court often three months. All the natives who attend court as jurors acquaint themselves so thoroughly during their attendance with the forms of legal proceedings and the rules of examination, that the government, since the establishment of this institution, has been able to select from the natives and the members of the demi-cast, some most excellent and worthy magistrates for the country. Placed under the inspection of the supreme court, they administer justice to their fellow-citizens in small matters with but little if any expense to government. The introduction of jurors composed of natives has produced a threefold benefit: it has increased the usefulness and importance of the courts of justice, relieved the accused and the witness from the great inconvenience to which they were subjected by the long continuance of the sessions of the court, and enabled the government to save in the administration of justice £10,000 per annum, as my report shows (page 8 of the printed document sent to London). No man of doubtful integrity and veracity is inscribed on the list of jurors, and this makes such an inscription an evidence of fair character. They appeal to it when charged with offences, and rely on it when they apply to government for employment. The lists of jurors which are received at every term of the supreme court exercise over the people of that country a powerful influence, and induce all the inhabitants to attach more importance to truth than they have been accustomed to heretofore. The right of sitting as jurors has elevated the character of the natives of Ceylon, and rapidly advanced them in moral attainments. All who are inscribed on the rolls of jurors think that they possess as great a share as the European judges themselves in the government of their country, and also take an interest in the support of the British government to which they



were before strangers. A judgment can be formed of the change which has taken place in their dispositions in this respect, by the difference in their conduct during the war of Kandy in 1803 and that of 1816. The war of 1803 was previous to the establishment of the trial by jury. During its continuance the native inhabitants of the English possessions were for the most part in a state of revolt.

In 1816, five years after this new mode of trial was introduced, so far from showing the least discontent, they availed themselves, in the heat of the contest, of my return to Europe, to express through me their gratitude to the British government, and their thanks to his Majesty, for granting them the important privilege of trial by jury. This attests the correctness of the address inserted at pages 16-50 of the collection which I have already cited. The report, made in 1820 by my successor in the office of chief justice, furnishes new and decisive proofs of the beneficial effects which have resulted from this measure. Some interesting information on this subject may be found in pages 289 and 290 of the tenth volume of the "*Asiatic Journal*." Every native juror, whatever may be his cast or religion, and whatever part of the island he may inhabit, attends court at least once in two years. At the opening of the court the presiding judge delivers a general charge to the jurors in attendance. The institution of the trial by jury has, therefore, not only given to the natives a part of the administration of justice, but also an opportunity of hearing the observations of the judges on the objects and condition of society, and on public and private morals. The difference in the conduct of the owners of slaves in Ceylon in 1806, before the introduction of the jury, and in 1816, five years after its introduction, is strong evidence of the change which the judges have effected in public opinion, by availing themselves of the opportunity, which the opening of the court offered, of inculcating on the minds of the natives correct ideas on the subject of improving the different classes of society. The right of holding their slaves having been granted to the owners by the capitulation which transferred to the English, in 1795, this Dutch colony, the British government has not thought itself authorized to abolish slavery, however desirable such a measure may have been. Nevertheless, in 1806, before the trial by jury was estab-

lished, I proposed to the proprietors of slaves that they should themselves adopt some plan for the gradual abolition of slavery. This proposition was unanimously rejected at that time. The institution of a jury for the benefit of the natives having been introduced in 1811, I availed myself after that time of every opportunity which was furnished by my annual addresses to the jurors, who were generally owners of slaves, to inform them what had been done in England for the abolition of slavery. In addition to this, I pointed out the difficulties which arose, and which they themselves could not but perceive, when they were obliged to perform their duties as jurors in prosecutions in which slaves were parties. I soon observed a sensible change in their opinions concerning slavery; and finally, in 1816, the holders of slaves, of every cast and religion, delivered to me, for the purpose of being published and deposited with the records of the supreme court, a unanimous resolution, which declared that all the children of slaves which should be born after the 12th of August, 1816, should be free—a measure which, in a few years, will put an end there to slavery, which has oppressed that island for more than three centuries.

These results of the judicious philanthropy and zeal of a magistrate, whose intelligence and experience had enabled him to preserve the happy effects of a wise innovation, furnished an excellent answer to the arguments which prejudice and cupidity interpose against improvements. It is remarkable that the natives of Ceylon have been induced, by the benefits resulting from the trial by jury, to deliver their country from the scourge of slavery, while the English and the Creoles, in the British colonies of the West Indies, oppose an obstinate resistance to every project which favors their unhappy slaves, and find apologists among distinguished writers. The results obtained in Ceylon do honor to the British government, and induce the philanthropic to regret that the unfortunate inhabitants of India, instead of being placed under its immediate control, are still condemned to groan under the yoke of a company of merchants, which, so long as it possesses this beautiful and vast country, will surely never bestow on it the blessings of the trial by jury, nor unbind the fetters of the slave.

## No. VIII.—VOL. 1, p. 88.

*Re-election of Van Buren to United States Senate.**To the Republican Members of the Legislature.*

*Some plain and obvious reasons why the Republican Members of the Legislature, who are supporters of the Administration of the General Government, should oppose the re-election of the Hon. Martin Van Buren to the Senate of the United States.*

The writer of these pages is a personal friend and admirer of Mr. Van Buren, and, in submitting these remarks to his political friends, does not intend to injure his usefulness, nor impair the high confidence which the republican party has placed in him. If it was believed that such would be their result, they would be withheld. But no intelligent man can seriously entertain such an opinion. It may be that some ardent and enthusiastic partisans of General Jackson may have wrought up their imaginations to such a pitch as to believe that Mr. Van Buren's future hopes and the safety of the republican party depend on his re-election; and it may also be that some of his most devoted and sincere personal friends, led away by the ardor of their attachment, may honestly entertain the same opinion. It is, however, far more probable that the shrewd, active, and intelligent corps of the enemies of the President and Secretary of State, who are daily and hourly laboring to bring them into discredit with the republican party, will affect to believe that, if another is preferred to him, he and the party with which he is connected will be politically destroyed. It is the pride and boast of that party that, while they honor and distinguish with favors their eminent and active members, they are not indebted for their existence, success, or future prospects to any individual, or set of individuals, however meritorious and capable they may be. Will any well-informed member of it seriously maintain the opinion that if Providence, in its inscrutable dealings, should terminate the worldly career of this distinguished individual, or deprive him of his reason, that the republican party would be dissolved? Or if

that party, or a respectable portion of it, should see fit to change his sphere of action, and call him from the general into the state government, or desire him to suspend his claims on it for a time, and wait until they could more consistently with their feelings and policy renew their favors, that a like catastrophe would follow?

Let another question be asked. Would Mr. Van Buren have any reason to complain if his political friends should wish him to retire from his present station on the 4th of March next, and would he complain if they expressed such a wish? The last branch of the interrogatory shall be answered first.

Although the writer does not profess to know Mr. Van Buren's most secret thoughts, yet he is confident that he is sufficiently well acquainted with him to state what would be his sentiments. They surely are not so selfish and grasping as to induce him to insist on or be disappointed if he does not succeed in obtaining preferment against the wishes of a majority, or a large and respectable portion of his political associates, who may honestly differ with him on some points of policy. Mr. Van Buren, or the writer mistakes him greatly, is too honorable a man to crowd himself, or wish his friends to crowd him, into a situation in which previously-avowed opinions would oblige him to act inconsistently, or misrepresent the views of a majority of his constituents.

He has been in the enjoyment of the best gifts of his party for many years, and if views of policy should require his temporary retirement, he ought, and doubtless would be, the last man to forget the benefits he had received.

Furthermore, Mr. Van Buren put himself in the ranks of the opposition to the administration at Washington at an early day, and without consulting, and in fact before he could consult, the wishes of his constituents. This he had an undoubted right to do, and the earliness with which he did it displays something like political chivalry. He will never be unwilling to meet the consequences of this act. He knew at the time, and well knows now, that one of those consequences is the decided and manly opposition of the supporters of the administration among his constituents and political friends. He would "laugh in his sleeve," as the phrase is, if the open friends of the general ad-

ministration were wheedled by his advocates about the capitol into his support.

If the selection he has made at Washington proves to be fortunate, he will probably reap the benefit of his early declaration after the next Presidential contest. He knew well the game he had to play, and certainly has too much good sense to suppose he must not abide the result of an unfortunate move.

But whether Mr. Van Buren would or would not complain in case he should not be re-elected, is not so important as to ascertain whether he would have *any reason* to complain; and this was the first branch of our inquiry. Perhaps the high respect which the writer entertains for the talents and acquirements of this fortunate and eminent politician, and the obligations which many of his political friends may suppose the republican party is under to him for the services he has rendered it, may lead to more remarks on this topic than its importance would seem to justify. For it may well be asked, Shall the interests of the state, the policy of the party, or of a large portion of it, yield to the fancied or real claims of an individual to preferment? The republican family of this state has never been charged with ingratitude towards any of its members, and the writer would deeply regret advising any measure which could justly be characterized as ungrateful. But to return to our inquiry. Will Mr. Van Buren have any reason to complain of the whole or any portion of his party who may consider it their duty to oppose his re-election? He took his ground last winter at Washington with a full knowledge that a large majority of the republicans of this state approved of the election of Mr. Adams, and intended to give his administration a fair support. He set himself in array against it before its character could be known by its measures, and thus by his early and avowed hostility to the President and Mr. Clay, not only courted but defied the opposition of their friends in this state. Surely his most zealous advocates will not pretend he has any claims on them. Has he any on the republican party? The selfishness of modern politicians has introduced new phrases into our language. During the times of Jefferson and George Clinton, when republicans united their efforts to support the constitution because they considered it their duty, the man would have been marked as unworthy the confidence of the party who should have



claimed its favors on the ground of a debt due to him. To create fictitious obligations, and then urge their performance, is a recent device to gain office, and one which the distinguished individual in question doubtless despises. It is resorted to only by his ardent and less intelligent supporters. It is the duty now as formerly of every patriotic citizen to become an active member of the republican party, who believes its policy best calculated to promote the interests of the state. If Mr. Van Buren has claims for the active support which he has given it, then an account of debt and credit must not only be opened with him, but with every other member of the party. Who does not see that pretended claims are idle and unfounded? If any one, however, is so mercantile or mercenary in his notions as to suppose that the balance of the account affects the question, let him adjust it according to the rules of good book-keeping, and act accordingly. The republican party will be actuated by higher and nobler motives.

Mr. Van Buren will suffer no political or pecuniary injury by retiring from the public service a short time. He will soon be called into it again, and probably under circumstances more favorable to his usefulness as a member of the party. He has been in the enjoyment of its choicest gifts for more than ten years; favor has followed favor, until at last his blind admirers almost think he has a pre-emptive right to the highest offices in the gift of the state. Who has raised him to his present elevation? The republican party. Does he not owe it, then, a debt of gratitude, which gives it a right to decline or ask his future services? How unmanly and ignoble would be his conduct should he complain if the interests or policy of that party, or a portion of it, required the election of some other gentleman to the Senate! Nor will his services as a partisan be lost. On the contrary, they will be more valuable. He will be with his political friends during the sessions of the Legislature, and they will have the benefit of his advice and assistance. These they have a right to demand for favors previously conferred.

Let, therefore, the subject be viewed in whatever light it may, it appears to be very clear that the republican party may decline Mr. Van Buren's further services in the Senate of the United States, without doing him any injustice or giving him any good reason to complain.



Six years ago, he and his friends thrust Mr. Sanford out of the Senate rather abruptly, and who ever thought of accusing the party of ingratitude, or questioning their right to prefer Mr. Van Buren to him? And who ever heard Mr. Sanford complain of his political associates, or question the correctness of their conduct? Did it do him or the party any injury? Was he not noticed again the first opportunity? And is he not now just as far advanced in political life as he would have been had he been re-elected six years since?

The partisans of General Jackson, all of whom are zealous in the cause of Mr. Van Buren's re-election, trusting to their superior skill in the management of a caucus, have been exerting all their influence, since the last election in this state, to bring the minds of the republican members of the Legislature to a belief that the election of a senator ought to be determined by vote in caucus. To effect this, they have urged union among republicans, and labored to convince them that it would be unwise and impolitic for the party to take sides for or against the general administration, and that its true course was to assume and maintain a strict neutrality. The effect of this doctrine upon the question of senator is plain. It paralyzes the exertions of the supporters of the President and Mr. Clay, and places them in a situation in which they will become either the instruments or silent spectators of the election of a decided opponent. While the doctrine is preached, the practice under it wears a different aspect. By what other test can the general administration ascertain who are its friends or foes in this state, than by the political character of the person we shall send to the Senate?

What is the difference between passing a resolution censuring it, and electing a man to the Senate who, it is well known, has and will oppose all its measures? When, therefore, Mr. Van Buren's friends preach neutrality, they do it only to carry on more effectually a war in disguise. His election is in effect a pledge of the republican party to support General Jackson. Sophistry can give it no other aspect. The republican members of the Legislature are asked, with great solicitude and earnestness, whether they are prepared at this early day to give such a decisive indication of hostility to the President and his administration as the re-election of an open and avowed opponent must necessarily give?

Sound policy and self-respect would seem to require a different course. It is impossible to see how the true and honest friends of the general administration can reconcile such a measure with their political sentiments. They may perhaps try to satisfy themselves with the excuse that they were outvoted in caucus. But will such an excuse amount to anything, when they go into caucus with full knowledge that they will be in the minority? Most certainly not. On the contrary, it will aggravate their abandonment of their friends, for it will be nothing more nor less than resorting to a subterfuge to screen themselves from just censure. It must be unnecessary to dwell on this view of the subject, as there can be no true friend of the President or Mr. Clay in the Legislature who is ashamed to avow his friendship for them; and if there is, pray let him be known by whining his apology after the result is declared: "We were voted down in caucus." Such apologies will be understood and duly appreciated at Washington. Mr. Van Buren's advocates will probably cry, "Treason! treason!" at these remarks, and vociferate the denunciations against any man who may attempt to maintain them. Not too fast, gentlemen! Let us take the matter up coolly, for the writer has been long accustomed to the usages of the republican party, and thinks he understands them full as well as you do; and what is more, he humbly apprehends he entertains for them a becoming respect, and is incapable of advising a measure which can in any way lessen the benefits which the party have derived from them. Why have republicans always settled differences of opinion by taking the sense of the majority in caucus? The answer is obvious. Because there is a powerful and organized party in the state which opposes them on all questions of policy and patronage, and self-preservation renders such a course necessary. Their opponents have always done the same thing in substance, though they have resorted to various devices to shelter themselves from the odium which, in the opinion of some, is attached to such meetings. As long as there are two political parties in this state in hostility to each other, there must and will be caucuses; and that party will generally succeed best which is most willing to comply with the will of the majority. The republican party has always been more magnanimous in this respect than their opposers, and this is one cause of their success. If the parties

in this state had no opposite interests or policy, it is idle to suppose they would meet to concert measures in hostility to each other, or that they would exist at all. Opposition of interests and policy create and sustain parties, and when that ceases, the parties which it created cease also. There is a marked difference between the interests and policy of the republican party and its opponents on all questions connected with the administration of this state, and the writer will be the last man to advise a departure from the old usages of the party on those questions. It is far otherwise at this time in respect to the general government. In the days of Jefferson and Madison, the whole United States were divided on questions of national policy, and the result was the division of the people into two great parties, which embraced the Union. As long as those parties continued, they were obliged to hold caucuses to settle differences of opinion among their respective members, and produce unity of action. It was in those days that the republican party of the nation was distinguished for the wisdom and energy of its measures, and happy and fortunate would it have been for this country had it remained entire, and continued to flourish till this day. But it is a melancholy truth that this noble party found its grave in the defeat of its opponents during Mr. Monroe's administration. It is useless now to mourn over its destruction, or pine at the blessings it might have conferred. In this state, opposition to the republicans as a party has continued to this day, and to meet that opposition the old usages of the party have been, and will be, successfully followed. The republican party, as a national party, has had no existence for many years. Every intelligent man knows this, and it may as well be avowed at once, for "honesty is the best policy," as well in politics as other things. Whoever contends that the republican party exists, and that its usages are binding, so far as national questions are concerned, argues against better knowledge, and, without any violence to charity, may well be suspected of some selfish design.

This view of the subject will appear more striking when the fact is adverted to, that there is no difference of opinion between the two parties in this state, considered as parties, on the subject of the general administration. It is very certain that they are not arrayed against each other on questions affecting its measures.

The fact is, both parties are divided among themselves on everything connected with political transactions at Washington, and to be consistent, the two corresponding sections of each should concert their measures together. This, however, is unnecessary, and only mentioned to show how absurd it is to contend that the usages of the republican party, established and maintained for its preservation and success in this state, should be applied to national subjects. It will probably be urged by the partisans of General Jackson, that submitting some measures of the party to a caucus, and some not, will be very absurd. So it would be if all measures were alike hostile to the opposing party in this state. But let it be asked, if it is not very absurd to concert measures by caucus against our friends? The writer will take the liberty of making a suggestion in the shape of a prophecy, and that is, that if the republican party undertake to settle in caucus its national measures, the result will be dissolution and defeat in this state. Its members can never agree in such a course. It proved ruinous to the party two years ago, and will again. The better way is to come to an understanding at once, that every republican is at liberty to take his own course on all measures connected with the general administration. This will preserve peace and harmony at home. Possibly the vote of a majority in caucus on the question of senator may control the election, but it cannot control when the general contest approaches and becomes animated. And as the party begins, so it must endeavor to proceed. The result will be anything but harmony. Whether, then, there is a small majority one way or the other, it seems to be most judicious not to attempt to carry anything by means of a caucus. Great pains have been taken by the friends of General Jackson to convince the republican members of the Legislature that there is great unanimity in the election of Mr. Van Buren, and among other common devices have procured all the friendly editors of papers throughout the state to come out with articles on the subject. This should deceive no one. As it is very certain that no true friend of the President or Mr. Clay will for a moment think of sending an open and avowed enemy into the Senate, it is clear that Mr. Van Buren has no support beyond the partisans of General Jackson.

The writer can assure the reader that he is no protégé of Mr.

Adams or Mr. Clay, nor any sharer of the bounties of the state or general government; that he feels a deep interest in the honor and prosperity of his country, and has written these pages, as he trusts, under the influence of commendable motives. He does not wish that his remarks should receive greater attention than they intrinsically deserve. He submits them to the candid perusal of the true and firm friends of the general administration, and to the perusal of all who wish the day far distant when military renown shall qualify a citizen for the Presidency.

A REPUBLICAN.

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No. IX.—VOL. 1, p. 90.

*Argument on Trial of Strang for Murder.*

Mr. FOOT, of counsel for the prosecution, conceded that admissions of guilt were only receivable in evidence when the result of the operations of an awakened conscience. The question, therefore, here was, whether the confessions made by the prisoner were in consequence of inducements held forth to him, or whether they arose from a sense of guilt? There was no evidence that at the time of the confessions any inducements whatever were presented to the mind of the prisoner, of the nature of a threat or promise; and if such inducements had been presented, they had been presented at periods antecedent to the time of the confessions, and when no admissions had been the consequence. That the rule of law on this subject goes no further than to exclude admissions of the same or like facts, acknowledged at a previous time, when improper or illegal inducements had been held forth, for then they may have resulted from the same influence which caused the original confession. That to exclude admissions, because at some previous time improper inducements had been presented, would be destroying one of the best settled rules of evidence, viz., that a confession, when it is voluntary, is one of the strongest proofs of guilt; for it cannot be supposed that a person really innocent would *voluntarily* subject himself to infamy and punishment. Mr. FOOT cited a case



where a prisoner had been told by a constable's assistant that it would be better for him to confess, but the magistrate cautioned him frequently to say nothing against himself, and yet his confession was held to be admissible; and several other cases of a like import, from Starkie on Evidence, II., 49 and 50. He contended that the court should not speculate on the question whether previous inducements may not have influenced the confessions, but the inducements should be shown manifestly to have produced the effect.

The conduct of the police magistrate in examining the prisoner on oath, on the 8th May, was not only excusable, but it was his duty. The prisoner had repeatedly asserted that he had seen persons lurking about the house, and the magistrate had a right to examine him on the subject to obtain the necessary information to apprehend the felon. At all events, this inquiry was courted by the prisoner himself, and arose from his own declarations. The grand jury also had the right to examine him on oath, to give evidence against another person implicated in the same charge with himself. Nothing is more usual than that accomplices are called upon to testify against each other. The right has never before been questioned. And the caution of the grand jury to the prisoner, not to implicate himself, was everything but a farce; it was the application of the benign and merciful rule of our criminal code, which, while it asserts its power against the violators of law, forgets not that the accused is entitled to the protection of the law.

Again; the prisoner had been repeatedly cautioned by the police magistrate against criminating himself. He was so cautioned, particularly on his first examination, and we are prepared to show that he was cautioned in the same manner at a subsequent time. And if after being thus cautioned by the magistrate, he makes disclosures, the rule of law is well settled, that though subsequent inducements are held out, the confessions of a prisoner are admissible.



No. X.—VOL. 1, p. 95.

*Tariff of 1828.*BALTIMORE, *January 4, 1828.*

ELISHA DORR, Esq.

DEAR SIR:—I had not intended to have written to you until after my arrival at Washington; but having met in this city with an account of the resolutions and debate upon it for giving to the Committee on Manufactures power to institute a compulsory inquiry, having heard the subject canvassed by able and sincere friends of domestic industry, and having learned some interesting facts in relation to this proceeding, I have concluded to write you before reaching the scene of action. The political aspect of the vote gives great anxiety to the real friends of our manufacturing and agricultural interests. Mr. Hezekiah Niles, who is well known as the able and efficient advocate of these interests, has given me the following statement of that vote:

	For the Resolution.	Against it.	Absent.
Maine.....	2.....	5.....	0
New Hampshire.....	1.....	5.....	0
Massachusetts.....	0.....	11.....	2
Vermont.....	0.....	5.....	0
Rhode Island.....	0.....	2.....	0
Connecticut.....	0.....	6.....	0
New York.....	15.....	16.....	3
New Jersey.....	0.....	4.....	2
Pennsylvania.....	18.....	4.....	4
Delaware.....	0.....	1.....	0
Maryland.....	5.....	2.....	2
Virginia.....	16.....	2.....	3
North Carolina.....	8.....	2.....	3
South Carolina.....	8.....	0.....	1
Georgia.....	6.....	0.....	1
Kentucky.....	6.....	5.....	1
Tennessee.....	7.....	0.....	2
Ohio.....	2.....	12.....	0

	For the Resolution.	Against it.	Absent.
Louisiana .....	3.....	0.....	0
Indiana .....	0.....	3.....	0
Mississippi .....	1.....	0.....	0
Illinois.....	1.....	0.....	0
Missouri.....	0.....	1.....	0
Alabama .....	3.....	0.....	0
	<hr/> 102	<hr/> 87	<hr/> 24

Nine friends of the administration voted for the resolution; three of the opposition against it. Of the former, only two, it is believed, are at all favorable to a protecting tariff.

This statement shows a number of extraordinary and alarming facts. Among others, the following:—1st, The opponents of a protecting system generally, and, it is believed, universally, voted for the resolution. 2d, The staunch and avowed friends of the system voted against it. 3d, It was carried mainly by votes from our own state, Pennsylvania, and Kentucky—the three principal manufacturing and agricultural states in the Union—and those votes are given by General Jackson's supporters in those states. There are one or two exceptions, but they are too slight to change the character of the vote. 4th, The whole delegation of Tennessee, which was present, voted for the resolution.

Let General Jackson's sentiments be what they may, this vote of his party (for so it must be regarded by the most prejudiced of his friends) ought to awaken serious apprehensions on the part of the real friends of domestic industry who have heretofore countenanced his claims to the Presidency. The people of New York understand strangling measures by committees, and, if I am a prophet, they will properly estimate the proceeding in question. Please to show this letter to Mr. Knowler, to whom I promised to write if anything interesting occurred on the subject of manufactures and agriculture. I really hope that he will take pains to give his political friends correct views of this unusual step at Washington. Perhaps the result will disappoint us. I sincerely hope it may.—I remain, dear Sir, respectfully your friend and servant,

SAMUEL A. FOOT.

No. XI.—VOL. 1, p. 101.

*Tariff of 1828.*

FOR THE ALBANY MORNING CHRONICLE.

MR. BEACH:—I cannot omit to express my entire approbation of the article in the Chronicle of to-day on the subject of the tariff bill, and the high gratification I received in perusing it.

The interests of the agriculturists and manufacturers demand a strict adherence to the recommendations of the Harrisburg convention, and no better evidence can be furnished of the friendship of an individual to the "American System," as it is termed, than his earnest support of those recommendations.

The efforts of Judge Buel, by the articles published under the signature "J. B.," to show that the bill proposed by the majority of the committee on manufactures, which differs so widely from those recommendations, is preferable to them, are futile. His calculations can easily be proved to be erroneous; and, although plausible, they indicate less knowledge of the subject than was to have been expected from him. His exertions to bring into discredit the proceedings of the Harrisburg convention—to all of which he assented at the time, and also at the meeting held in this city several months afterwards—appear very awkward, when we call to mind the fact that he declared his preference for General Jackson, and presided at a Jacksonian meeting in this city subsequent to his attending the Harrisburg convention, and before he made the great discovery that its proceedings were all wrong, and the provisions of the bill reported by the Jackson majority of the committee on manufactures, all right.—Yours, &c.,

A FRIEND OF THE TARIFF.

*Friday, March 14, 1828.*

No. XII.—Vol. 1, p. 101.

*Tariff of 1828.*

FOR THE ALBANY MORNING CHRONICLE.

I send you a plain statement of facts, with which every friend of the tariff and the country ought to make himself acquainted.

The Harrisburg Convention recommended that wool, which costs in a foreign market less than eight cents per pound, should be admitted into this country free of any duty, except that of 15 per cent. ad valorem, now charged by law. Every person acquainted with the subject knows that this kind of wool, which is very coarse, and raised in warm climates, does not come in competition with any raised in our own country. It is, however, essential to our manufacture of coarse cloths, and if not admitted with low duties, our manufacture of those cloths must cease.

The bill reported by the majority of the committee on manufactures, without increasing the duty on coarse cloths above that recommended by the convention, lays a specific duty of seven cents per pound, and an ad valorem duty of 40 per cent. more on this kind of wool, which is tantamount to a prohibition. The only effect of this part of the bill will be to destroy the manufacturer, without giving relief to the grower of wool; so that while the majority of the committee profess to aid the agriculturist, they in fact only injure the manufacturer.

The amendment proposed by Mr. Mallary, the chairman of the committee, and the firm and steady friend of the American System, is according to the recommendation of the Harrisburg convention.

So, too, as to fine wool. There is only a small quantity of it now produced in the country; but sufficient may be raised, with proper encouragement, to supply our wants. The convention recommended a duty on it of twenty cents per pound, to increase two and a half cents yearly till it reached fifty cents per pound (which is a prohibition), and there to let it stand.

The bill lays a duty on this quality of wool of seven cents per pound, and also of 40 per cent. ad valorem, as on coarse wool, which on all wool that costs fifty cents per pound, is for the

present much higher than that recommended by the convention, while, at the same time, the bill proposes no corresponding increase of duty on fine cloths.

The effect of the two measures is this: That of the convention raises the duty gradually to a prohibition, so as to meet the wants of the manufacturer, and encourage the growing of fine wool; that of the majority of the committee prohibits, or nearly so, at once, the importation of it, and cuts up the manufacturer.

Thus, as in the case of coarse wool, the majority of the committee profess to aid the farmer, while in reality they do him no service, and destroy the manufacturer.

It also now appears that the agriculturists and manufacturers of this country are indebted to our representative, Silas Wright, for the favors which this bill now proposes to confer on them. His political course and servile devotion to Mr. Van Buren are well known in this state, and no one can doubt that the same relation exists between those gentlemen in Washington as did while Mr. Wright was one of the agents of Mr. Van Buren in this state to defeat the electoral law. No man of intelligence can doubt, under these circumstances, the source from whence this bill proceeded. Mr. Van Buren knows how to defeat a tariff bill, or any other one, and avoid responsibility. He knew the real friends of the "American System" must and would oppose this bill. But I trust there is yet intelligence sufficient among the agriculturists of this country to determine who are and who are not honestly intent upon obtaining a fair system of protecting duties.

The friends of the tariff should not despair of success, even at the present session of Congress. Pennsylvania and the Eastern states have seen through the device, and are pouring in their remonstrances upon Congress; and there is a strong probability that the sincere friends of the tariff will yet prevail, and carry Mr. Mallary's amendments.

B. J.

No. XIII.—VOL. 1, p. 106.

*Argument on Conflict of Testimony.*

*A corrected and accurate sketch of the argument of S. A. Foot, Esq., counsel for the defendant, in the cause of the Fulton Bank v. Lewis Benedict.*

GENTLEMEN OF THE JURY:—I congratulate you on the prospect of the termination of this interesting and important controversy. It has thus far been conducted with a becoming spirit, with one slight exception, and to that I allude with reluctance.

You are aware that witnesses, who expect their testimony will be assailed, often exhibit on the stand excited feelings; but their angry accusations are as harmless as they are unworthy of notice. They do no injury except to the witness himself, as their only effect is still further to impair confidence in his statements.

My respect for the court, for you, gentlemen, and myself, as well as my regard for truth, will always restrain me, I hope, from making any statements in the opening of a cause which I do not believe will be proved; and if any misstatements are made, I trust I shall always have magnanimity sufficient to correct them, whether the subject of them be high or low, rich or poor, reputable or disreputable; and were I conscious on this occasion of having done Mr. Spencer injustice in this respect, I would correct my error. Mr. Spencer himself has testified that he was examined as a witness before the committee of the Legislature appointed to investigate the transactions connected with the incorporation of the Chemical Bank, and that he was also called and examined as a witness for the prosecution on Mr. Morrison's trial. It appears from the testimony of Judge Oakley that he and myself were counsel for Mr. Morrison, so that my statement in opening, that I had met Mr. Spencer at Albany as a witness on that investigation, was strictly true.

The duty which has devolved on me on this occasion is not only important but unpleasant. I am obliged to discuss the relative credibility of Mr. Keeler and Mr. Spencer—a most disagreeable service, but one which must be faithfully and fearlessly



performed; and I undertake it the more firmly because it has been committed to me by my former neighbors and long-trying friends.

Although a witness should not wantonly and carelessly be assailed, yet in the discharge of my professional obligations to those who have honored me with their confidence and committed their interests to my care, I cannot hesitate as to my duty, and must answer for the correct performance of it only to the court, my conscience, and my character.

When a witness is contradicted by so respectable a man as James Keeler, he must expect to have the vulnerable points of his conduct and character exposed. The cause of truth and justice require it.

Under the direction of the court, the counsel for the parties will discuss, and you, gentlemen, must decide two questions of fact:

*First*, Whether the note for \$15,000 now in controversy, was negotiated to the Hudson Insurance Company, on an usurious contract, or not.

*Second*, Whether the Fulton Bank was informed, when the note was transferred to them, that it had been previously negotiated to the Hudson Insurance Company.

The first question, gentlemen, being the most difficult and interesting, we will dispose of the second one first.

Mr. Foot here commented at large on the facts which favored the belief that the Fulton Bank had notice; both in February, 1826, when the note in controversy was lodged in the institution as collateral security for the payment of another note, and on the 19th of August thereafter, when the bank discounted it for the sum of \$14,000; that this note had been negotiated to the Hudson Insurance Company in the month of October previous.

I will now, gentlemen, call your attention to the great question which has been agitated throughout the trial, viz., whether this note was transferred to the Hudson Insurance Company in pursuance of an usurious contract. If you believe Mr. Keeler, then you must answer in the affirmative; if Mr. Spencer, then in the negative. Mr. Keeler states that the agreement between him and Mr. Spencer was, that the Hudson Insurance Company should loan Keeler & Rogers \$20,000, and that \$6,000 of that \$20,000

should be paid in bonds of the company, which were then from  $4\frac{1}{2}$  to 5 per cent. under par; and that this note, and another one, like it in all respects, for \$5,000, were delivered to the company on that agreement.

Mr. Spencer, on the other side, states, that he agreed to lend Keeler & Rogers \$14,000 on these notes temporarily, and till they could make other arrangements, provided the balance, viz., \$6,000, should remain as security for whatever Keeler & Rogers then owed, or should thereafter owe the company.

The \$14,000, as both witnesses agreed, was advanced to Keeler & Rogers on the 22d of October, 1825, by a check of the Hudson Insurance Company on the Fulton Bank, and a memorandum check taken back from Keeler & Rogers, on the same bank for the same amount.

Had you known James Keeler, gentlemen, in all the relations of life, as long as my client and I have known him, and were you acquainted with the exalted character he sustains in the community where he resides, your minds would be greatly relieved. But you can only judge of him from what has transpired in your presence.

We called upon our opponents in opening the defence, to cast a blemish, if in their power, upon his unsullied name. But they have not ventured to make the attempt.

I shall first contrast the opposing witnesses in reference to their interest in the controversy. Both of them were examined in Chancery in April last, and both were twice examined in the Circuit Court at Albany in August last on this subject. Thus each of them has testified on three different occasions relative to the terms on which this note was negotiated to the Hudson Insurance Company.

Mr. Keeler released all interest he had in the controversy on the 6th of January last, before he spoke in any court as a witness.

Mr. Spencer was released by the Fulton Bank from his liability to it, for the first time, on the 6th day of December instant, and of course after he had sworn on the subject three times. On each of those three occasions, he was interested to the amount of the sum of \$14,000, for which the bank discounted the note; for if the bank failed to recover by reason of the usury, then Mr.

Spencer is liable for the amount he had obtained from the bank on the usurious note. Morally, his interest is the same as before the release was executed; for having testified three times under the full influence of that interest, he is now obliged to confirm his former testimony, or admit its untruth. If interest could bias his mind, the effect of it still operates.

Your attention will now be called, gentlemen, to several variations between Mr. Spencer's present and former statements. Both, it will be remembered, were under oath.

1st. On this trial he has stated, that the Hudson Insurance Company loaned Keeler & Rogers \$3,000 on the 18th of October, 1825, six days previous to the transaction in question, and took their check for it, dated the 21st of that month, and that at the time of the loan they left business paper as security, on which the company received \$3,115.35.

On his examination in Chancery in April last, he repeatedly stated, that the company loaned Keeler & Rogers \$3,000 on the 21st of October, 1825, and took their check for it, and that those three thousand dollars were a part of the advances to which the difference between the \$14,000, advanced on the 22d of that month, and the amount of the notes, was to be applied.

It is due to Mr. Spencer, however, to state, that since his examination in Chancery, he has discovered and corrected his error. But he directly contradicted Mr. Keeler on this point in Chancery and on the first trial at Albany; and what assurance have you now, gentlemen, that he is not also mistaken so far as he contradicts Mr. Keeler as to the terms of the loan under discussion?

2d. Mr. Spencer now states, that the difference between the \$14,000 and the amount of the notes was to cover all indebtedness from Keeler & Rogers to the company.

In his examination in Chancery he expressly states, that there was a small prior loan due at that time from Keeler & Rogers, which was not embraced in the transaction on the 22d of October.

3d. On this trial Mr. Spencer has testified, that the check he gave Keeler & Rogers for the loan of \$3,000, made to them on the 28th of October, was a check of the Hudson Insurance Company.

On his examination in Chancery he stated, that he gave them his individual check for the money on that occasion.

Mr. Spencer is also contradicted in three particulars by other witnesses than Mr. Keeler.

1. Mr. Spencer testifies, that when Mr. Cunningham was called into the back room of the Hudson office to hear the agreement between him and Mr. Keeler, he (Mr. Spencer) stated that it was one of the terms of the agreement, that the loan was temporary, and that the money was to be repaid in the course of the next week (the 22d being Saturday), when certain paper came which was expected from Albany.

Mr. Cunningham states, that when Mr. Spencer recapitulated the terms of the loan in his presence, he did not mention anything relative to its being temporary, or to the moneys being repaid in the course of the next week.

2. Mr. Spencer, when testifying in Chancery, swore, that the note in question was discounted by the Fulton Bank, at his request and on his application.

Mr. Leavitt has sworn on this trial that the note was not discounted on Mr. Spencer's application, and that he does not believe he knew when it was discounted. Mr. Leavitt adds, that the note having been lodged in the bank as collateral security for other paper, the directors took it up voluntarily and discounted it to close the account.

Let me here, gentlemen, ask you whether Mr. Spencer must be considered always correct and every other person wrong. It is not necessary that we should call in question the motives of Mr. Spencer; it is sufficient for our purpose, that we show that his recollection is frail, in comparison with Mr. Keeler's; and let it not be overlooked, that Mr. Keeler has never erred nor been contradicted, on any fact of which he spoke with confidence, from the beginning of this controversy to the present moment.

There is one important and appalling circumstance which it is my duty yet to present to you.

On the examination in Chancery, Mr. Spencer carries the idea through the whole of his testimony, that the notes for \$15,000 and \$5,000 were taken by the Hudson company to secure the advance he then supposed made on the 21st of October, of \$3,000, the advance made on the 22d, of \$14,000 (when the notes were

delivered), and the advance made on the 28th, of \$3,000, making in all \$20,000, the amount of the notes.

In that examination he states, that the \$6,000, the balance of the notes, exclusive of the \$14,000, was to meet all "*advances*" the company had then made, or should thereafter make to Keeler & Rogers. When Mr. Spencer thus stated the agreement, he was not aware that the check, dated the 21st of October, was given for the loan on the 18th, which was secured by notes that day transferred to the company, and, of course, that in fact there were "*advances*" only to the amount of \$17,000, instead of \$20,000, for which it would be necessary to retain the notes.

On this trial and since he has discovered that error, and consequently a deficiency of "*advances*" to hold the notes, he uses a different phraseology. Now he states that the \$6,000 of excess was to be applied to all "*demands*" the Hudson company then had, or should thereafter have against Keeler & Rogers, thus bringing in other liabilities; and thus suiting the word to the state of facts. This is adroitly done. The only remark I have to make on the subject is, that no one doubts Mr. Spencer's skill, whoever may question his integrity.

Mr. Cunningham is supposed to corroborate Mr. Spencer, and as far as his testimony extends, he does corroborate him. It gives me pleasure, gentlemen, to turn from Mr. Spencer to Mr. Cunningham, and I am happy to have an opportunity to recall the remarks made in the opening, which might seem to involve Mr. Cunningham with him. Mr. Cunningham's conduct has been characterized throughout by frankness and candor, and I have no doubt he has told us the truth, and the whole truth, so far as his memory serves him. His testimony, however, appears to me to be unimportant. He was called into the back room of the Hudson office by Mr. Spencer to hear the agreement between him and Mr. Keeler. He states that the agreement, as recapitulated by Spencer, was, that the company should loan Keeler & Rogers \$14,000 on the notes (which were then shown to witness), provided the notes should remain as security for all other advances made by the company to Keeler & Rogers. He further stated that Mr. Keeler, as he supposed, assented to the agreement; though Mr. Keeler said nothing which he could recollect that induced him to think so, and Mr. Cunningham could not say



that, in fact, Mr. Keeler did assent to the agreement as then stated by Spencer.

Mr. Cunningham does not differ from Mr. Keeler on the subject of this interview. Mr. Keeler says himself, that Mr. Spencer mentioned something relative to the notes remaining as security for other demands; but he did not understand what he meant by it, as their agreement embraced no such arrangement.

There are several circumstances, gentlemen, which strongly corroborate Mr. Keeler's statement of the agreement. If it was made in the manner the defendant contends it was, then it accords with the general course of the business of the company, which was to loan their bonds on negotiable paper. Sometimes they paid part of the loan in cash, but in no instance, except the present, had they made a naked loan of money. If this loan was made on the terms stated by Spencer, then it was an exception to the whole course of their business. To this view of the case I may add, that Mr. Spencer states in his examination in Chancery, that there was a general understanding between the company and Keeler & Rogers, who were customers of it, that when they wanted loans they might have them by exchanging notes for bonds.

Again; two notes, one for \$15,000, and another for \$10,000, signed by a part of the drawers of the present note, and which were created on Saturday, the 22d of October, to be lodged with the company temporarily, and till the note in question of \$15,000 and its companion of \$5,000 were created, were given up on Wednesday, the 26th of October, and the other two substituted in their place.

Would the parties have done this if the arrangement was temporary, as testified by Mr. Spencer? Would they have parted with the two notes of \$15,000 and \$5,000, their only means of raising money to repay the \$14,000 and redeem the other two notes, amounting to \$25,000, if they had not supposed the arrangement a permanent one?

Mr. Spencer himself admits, that some days after the loan, there was some conversation between him and Mr. Keeler relative to bonds as connected with this loan, but he gives that conversation a different direction. He may have, in the multiplicity of his concerns, confounded the contract with some other subject,



and may now honestly suppose that what was said when the agreement was made, was said on some other occasion and in reference to some other transaction.

Mr. Keeler tells you, gentlemen, that a few days after the loan, he applied for the \$6,000 of bonds, but did not obtain them, as Mr. Spencer was engaged. How could he have applied for those bonds, unless the agreement was as he now states it?

These are the views and arguments, gentlemen, on which the defendant relies for your verdict. A few more general observations will close the discussion on our side.

The defendant has attempted, as his counsel declared to you in the opening he would, to impeach the general character of Mr. Spencer. You have heard the testimony and the decision of the court on that subject. The defendant was precluded by the order of the court, and to which he has excepted, from showing Mr. Spencer's general character, as derived from his connection in 1824 with what is generally called the "lobby," from his connection with the Green County Bank, which failed in 1826, and from the conspiracies for which he was indicted in the same year. What would have been the result of the testimony if his character had been generally opened to inquiry, it is not for me to say or conjecture.

You are driven to the unpleasant alternative of discrediting one or the other of these witnesses. If Mr. Spencer has gained your confidence, I shall, for his sake, by no means regret it. If he can restore himself to society and regain the fair name he once possessed, he shall be assisted, rather than obstructed, by my efforts, unless my duty to my client leads them in an opposite direction.

Mr. Foot made several more general remarks in conclusion, but as they were not directly applied to the points in controversy, we have not given them.

No. XIV.—VOL. 1, p. 123.

*Principles of Anti-Masonic Party, and Recommendation of Whig.*

The arrangements to establish the paper mentioned in the above prospectus have been made under the superintendence of the executive committee of the Anti-Masonic republican party of this city.

The committee take pleasure in assuring the public that the paper is established on a firm basis, both as respects the capital invested and the qualifications of the proprietors and editors.

Mr. Holley, the senior editor, has been most favorably known to the public for several years, as the able and talented editor of the Troy Sentinel.

Mr. Ward, his associate, has deservedly gained the confidence and respect of the Anti-Masonic party throughout the United States, by the zeal, talents, and eminent learning with which he has exposed the dangerous and secret rites and obligations of Freemasonry, and vindicated the supremacy of the laws, in his Anti-Masonic Review, which he has published in this city upwards of two years.

The patrons of the undertaking may confidently expect to find the Whig an impartial and able advocate of the Constitution, laws, and leading interests of the country, a firm supporter of morality and religion, an industrious gazette, and a valuable literary periodical. Indeed, the committee feel authorized to express an opinion that the Whig will not be inferior to, and they will be disappointed if it does not surpass, the best daily papers in this city.

It has been established by a number of patriotic citizens of this city, principally for the purpose of giving information to their fellow-citizens on the subject of Freemasonry. One of our western citizens has been forcibly taken from the bosom of his family, clandestinely conveyed to the border of the state, and there murdered; and trial after trial has been had to punish the offenders, upon which disclosures most appalling and interesting have been made, and yet the influence of Freemasonry is

so powerful, that not a leading journal in this city (with one partial exception) has *dared* to give even a statement of the testimony to the public.

The Whig is intended to supply this defect, which it will do by giving *facts*, and without offending its readers by personalities or a blind devotion to any party or aspiring individual. The paper will be what its name imports—a Whig.

HENRY COTHEAL,  
*Chairman of the Committee.*

NEW YORK, *March 23, 1831.*

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No. XV.—VOL. 1, p. 131.

*Renewal of Charter of United States Bank.*

MESSRS. EDITORS: The time appears to have arrived when the question of renewing the charter of the United States Bank must be met and decided by Congress.

The importance of the subject ought to draw from all who have examined it the result of their investigations and reflections. This, like all other contested questions, when stripped of the adventitious considerations with which opposing and zealous partisans have connected it, and when separated from the propositions which the friends and foes of the bank concede, settles down to a comparatively narrow point.

I shall dismiss from the few suggestions I intend to make, the real or intended scruples of the few who oppose the re-chartering of the bank on the ground of its unconstitutionality; for if anything has been definitively settled relative to the powers of the general government, it is the right of that government to incorporate a national bank.

The friends of the institution (if I have been successful in collecting correctly their views from their numerous and able publications), concede the general proposition, that a national bank ought not to possess any peculiar immunities nor enjoy any exclusive advantages over the local or state banks; and the opponents of the institution admit, that it has been of great

service to the country, and ought to be continued, if that can be done without creating a dangerous monopoly.

The point seriously in dispute, and the only real source of difficulty, lies in ascertaining the restrictions which ought to be imposed on a renewal of the charter, so as, on the one side, to give to the bank the freedom of action necessary to secure its benefits, and on the other, to prevent it from oppressing the local institutions and the other pecuniary interests of the country.

The following restrictions are suggested as calculated to effect the objects desired, and perhaps on some future occasion the writer may give his reasons for each of them :

1. The bank shall have a right to establish *three* branches in each of the three largest states ; *two* branches in each of the three next largest states ; and *one* branch in each of the other states ; but, with the consent of the Legislature of any state, may establish as many branches in it as the board of directors may think proper.

2. Whenever a branch is located in any state, its location shall not be changed without the consent of the Legislature of that state.

3. A given amount of capital, to be determined by the board of directors, shall be put into each branch, when established, and public notice given of it ; and this amount shall be constantly kept in such branch, neither to be increased nor diminished except after six months' public notice of the intention to do so, and not without the consent of the Secretary of the Treasury of the United States.

4. Each branch shall be allowed to charge on loans the same rate of interest as the banks of the state where it is located, and its capital shall be subject to the same general taxes as the bank capital of each state.

5. The bank may withdraw and discontinue any of its branches after six months' notice of its intention to do so ; but shall not re-establish any such branch without the consent of the Legislature of the state.

6. The capital of the mother bank shall be subject to the general taxes of the bank capital of the state where it is located ; such tax not to exceed, however, a certain reasonable percentage on the capital there employed, to be fixed by Congress ; and the

bank shall be allowed to charge on loans the same rate of interest as the other banks of the state.

7. The bank shall be restricted from dealing in foreign exchange.

NO STOCKHOLDER.

NEW YORK, *January 27, 1832.*

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NO. XVI.—VOL. I, p. 137.

*Conversation a Branch of Education.*

ADDRESS.

*Young Gentlemen, Members of the Euglossian and Alpha Phi Delta Societies :*

A life, thus far, of practical effort, and the avocations of a laborious profession, disqualify me for attempts, if I had the wish, to amuse you with the images of a rich and playful fancy, or entertain you with a display of profound and varied erudition. My motive for accepting the invitation with which you have honored me, was to furnish my feeble countenance and support to the great and controlling interest of our favored country, *Education*; and I shall be amply rewarded for the performance of the interesting duty which I have assumed, if I am able to present to my auditors a single additional incitement to the many already before them for increased exertions in promoting this momentous object, or make, in aid of it, a new and valuable suggestion.

The name of one of your societies, the Euglossian,\* has suggested a theme for my address.

Thought and vocal articulation are the distinctive characteristics of man. To think *clearly* and speak *well* are his highest attainments, and to these objects education is rightly and principally directed. They are dependent upon each other, and the possession of one is comparatively of little value without the

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\* Good speaking.

possession of the other. We may reason during life to no purpose if we cannot express intelligibly our conclusions; and certainly it is useless to speak, however polished our diction, if we have not thoughts to communicate.

An inquirer into the works of the Creator finds nothing, except the mystery of mind, more wonderful and fearful than the human voice. The simplicity and power of the organs of speech alone furnish sufficient reason for the exclamation—

“How wonderful is man !

How passing wonder He, who made him such !”

The line which separates the human family from all other created beings is distinctly marked by the faculty which we possess of representing the complicated operations of the mind by distinguishable sounds. There is no idea, no modification of an idea, no complication of thought, no passion, no emotion, no affection of the heart, which cannot be communicated by the voice. Its compass is commensurate with the boundless regions of feeling and thought. It has a representation for every conception of the mind, from the turning of a top to the wheeling of the heavenly orbs in infinite space. It has a tone for every want, from the cravings of infantile hunger to the thirstings for immortality; and for every impulse of the heart, from craven fear to undaunted courage; from cringing sycophancy to manly self-respect; from cold and calculating selfishness to warm and generous friendship; from hypocrisy to ingenuousness; from the deep and dark plottings of depravity and crime to the holy and seraphic expressions of heavenly love.

Nor can bounds be fixed to the compass of the voice but by the command of the Creator. As the range of mental action is extended by the increasing light of knowledge, and the affections of the heart expanded and awakened to effort by the genial influence of philanthropy and Christian love, which are steadily acquiring additional influence from the great charitable enterprises of the day, so will our vocal powers be enlarged, and each new idea possess its correspondent sound. I apprehend the tone of voice is yet to be heard on earth in which man, with a clear, full, and realizing view of the value of an immortal existence, and of the destiny which awaits it, will address his fellow-man.



The voice is also distinctive of persons and indicative of character. It is varied and distinguishable as the human countenance. A person is known almost as well by his voice as the expression of his face. This enables us to distinguish friends from foes in the darkness and perils of the night; and supplies, in part, to the blind, the loss of their sight. The tones of the voice, although not unerring indexes of the heart, still supply valuable means of judging of the character of those with whom we are frequently obliged to act without the benefit of a previous acquaintance, and especially if we have the advantage of listening to them in the freedom of unrestrained conversation. The voice is often "the standard of the man."

This faculty was given to us, not only for useful ends, but also for enjoyment. Melody and harmony afford us pleasure of the purest and most exalted kind; and although they may be produced by mechanical skill, yet the strains, which are said to "suspend an angel's harmony to listen," proceed from human organs. But the pleasure we derive from this power of the voice is not confined solely to musical performances. We enjoy in a high degree the exercise of it in public debate or colloquial discourse. Melodious tones and harmonious diction give indescribable charms to conversation; indeed, it is hardly tolerable unless they are possessed to some extent.

I must not dwell longer on this topic, which is full of interesting and instructive reflections. It would require a volume to present the various powers of the human voice; and I will only add, for the purpose of impressing you more deeply with a sense of its value, that Deity himself has honored it, by adopting it on several occasions as a medium of communicating his will to man.

You need not be told that the voice is an improvable faculty—that if harsh, it can be softened, and if feeble, strengthened, by attention and practice—that although its individual character cannot be changed, any more than the features of the face, yet the cultivation of it is always rewarded by valuable results. But you will permit me to remind you of the duty which devolves upon all, and especially upon the talented youth of our country, who enjoy the advantages of a liberal education, and who aspire to distinction, to improve this invaluable endowment to the

extent of the means they possess. We are all under a high obligation, which derives its sanction from the will of the Creator, to perfect, as far as we are able, all our faculties, whether they be intellectual, moral, or physical, so that we may fulfil, in the best manner, the object of our creation; and this obligation rests upon us with increased force in respect of those faculties which are peculiar to our race. It also presses with singular strength on our educated youth. No graduate of a college can conscientiously say that he has done justice to his parents, to himself, or his country; nor can the instructors of our youth say that they have well acquitted themselves of their responsible trusts, unless anxious and devoted attention has been given to this object. The appellation which has been assumed by one of your societies (and the members of the other doubtless share in the same sentiment) shows that you realize the force of the obligation of which I am speaking, and intend to perform it.

The cultivation of the voice is principally directed, and should be so, to improvement in speaking. This is one of the great employments of life, and ranks next to the improvement of the mind. The best definition, probably, which has ever been given of rhetoric is "the science of speaking well." To speak well, however, embraces a capacity to communicate our thoughts and feelings appropriately and impressively, at all proper times and places—before large assemblies in public halls, and in the social circle by the fireside—in a word, it includes *oratory* and *conversation*. We find that the former has been cultivated, as an art, from the earliest history of letters to the present time. Its power and importance have always been felt and acknowledged in all civilized countries; nor in them only—the untutored savage, as well as the finished scholar, worships at the altar of *Hermes*. In this country, talents for public speaking are "better than the merchandise of silver, and the gain thereof than fine gold." The pulpit, the bar, the legislative hall, and assemblies for beneficent objects, afford fields for oratorical efforts, the results of which no one can estimate. They produce effects on the minds and hearts of the auditors which often are not developed till years afterwards, nor till the cause is forgotten. The minds of men have so close a connection, are united by so strong a sympathy, thought is so subtile and swift, and intelligence so speedily and exten-

sively spread, that there is, as it were, an intellectual atmosphere encompassing the earth, which, when agitated by the power of a vigorous intellect, undulates from pole to pole. Nor does the effect of a bold, original, and striking train of thought, uttered in correct and impressive language, cease with the present generation; no, its influence continues for ages.

Volumes have been written upon oratory. The best talents of ancient and modern times, and of our own country, have been applied to the development of its principles, and to the giving of instruction for its practice. In view of its value under our free, political institutions, the attention of the public has been, and still is, directed to its cultivation. There is no branch of education more highly esteemed; none more deserving. But while I say this, let me remind you of what I have already mentioned, that a man, to speak well, must not only be able to address with effect large assemblies in public places, but also to speak with correctness and elegance in the social circle and in his daily intercourse with his neighbors and friends, and to *this topic, as a branch of education*, permit me to invite attention.

Good conversation is speaking well in familiar discourse. It is difficult to draw the line of distinction, though easily discerned, between it and oratory. They are sisters. One, the elder, commanding our admiration by her dignified and graceful manner; the other, the younger, awakening our interest by the artless playfulness of youth. A powerful intellect, various learning, extensive reading, high-toned moral principles, a refined taste, a good voice, clear and correct enunciation, and polished manners, constitute the principal requisites both of an eloquent speaker and of an entertaining and interesting converser. Although these high qualities are essential to the first order of both oratory and conversation, they are not so in the same degree to each. Without attempting a full specification of their relative value in each art, I will call your attention to one or two of them which appear to be peculiarly indispensable in conversation.

The first is moral principle.

In formal discourses, the speaker always has, or ought to have, an opportunity for preparation. This enables him to regulate his train of thought and course of argument by a cool exercise of his judgment; and though his performance may want the full and

lofty tone of conscious integrity, he will not offend his audience by a disclosure of his own worthlessness. But in familiar discourse we must speak, if we speak well, from the impulse of the moment. Our thoughts should come warm from the heart. If that fountain is elevated and pure, the stream will be lively and clear. But if we are obliged to keep a steady and vigilant guard upon ourselves to conceal some selfish design, or from fear of betraying our moral deformities, our conversation becomes irksome and uninteresting.

Thus we see, without further illustration, that high moral principles are an indispensable qualification for agreeable conversation.

A pure and cultivated taste is another.

Whenever we speak before large assemblies, or in the retirement of social intercourse, the appropriateness of our thoughts and sentiments materially depends on their adaptation to the occasion; and propriety of subject, thought, and manner, is one of the greatest beauties of speaking. "A word *fitly* spoken, is like apples of gold in pictures of silver." In making preparation for a set address, there is time to consider topics, select illustrations, and reject everything which does not accord with the attending circumstances. But in the freedom and animation of the social circle there is no opportunity to deliberate upon the fitness of each remark; nor is it well to tame the spirit and interrupt the flow of lively conversation by stopping to do so. That office must be performed instantaneously by taste, which approves or disapproves of each thought as soon as conceived. Without the aid of this active and sensitive regulator, our conversation would be far from pleasing.

The qualifications, which have been thus briefly presented, for good conversation, show clearly that it is an art, if not wholly acquired, at least greatly improved, by culture; and that it is one of the acquisitions which an education ought always to bestow, unless, indeed, it is of too little consequence to receive attention. That idea apparently prevails generally, and especially in this country. There is not a university, college, or seminary of learning in Europe or America, as is believed, which admits into its course of instruction, any study or exercise directly aimed at improvement in conversation. The schools in this country, on

what is termed the patriarchal plan (and of which this village has one surpassed by none),\* are, by their peculiar formation, partially adapted to this object. The constant presence of the instructors, and the familiar intercourse which is encouraged and maintained between them and the scholars, promote purity of thought and easy and correct expression. With this single and commendable exception, I know not an instance in this country or Europe, in which the pupils are recognized as conversable beings by the regulations of a literary institution of any grade. Many, distinguished in the annals of literature, and particularly in France, have written on the subject; but they have devoted their talents and learning to the discussion and establishment of rules in detail, by which the converser is to regulate himself. Most, and perhaps all, of these rules are just; but allow me to ask, with becoming deference to the opinions of others, whether animated conversation would not wither under an adherence to rules? Like the bird, when taken from its native field and forest, and deprived of the vivifying influence of the freshness and harmony of nature by confinement in a cage, loses the brilliancy of its plumage and the spirit of its note. There are, undoubtedly, certain general rules from which we ought not to depart; but to reap enjoyment and instruction from familiar interchange of thoughts and feelings, there must be freedom from constraint; and that is only obtained by a conscious possession of the requisite qualifications.

There is less necessity in England for scholastic instruction in conversation than in this country. The youth of that country, who receive liberal educations and are destined to sustain her name and bear her honors, enjoy the invaluable blessing of an educated parentage. In our own happy land of equal rights and advantages, where constitutionally and practically the people are the sovereign—where wealth, and honor, and power, and fame are alike accessible to all—the youth, who are our pride, and who, we trust, will excel their sires in knowledge, public virtue, and the sweet charities of private life, are, with few exceptions, unaided by educated parents. In general, the force of native talent and the buoyancy of moral principle carry them from the plough and

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\* I allude to the school conducted by Mr. William Kirkland.



workshop to fame and to power—and amid all their struggles for laudable distinction, there is none more severe, nor any which so frequently subdues a sensitive and lofty spirit, as that which is required to overcome the disadvantages arising from a want of early intercourse with cultivated minds.

Let it not be inferred from these remarks that I undervalue the parentage of any American youth. Far from it. Though not educated, it may be talented and virtuous. Many a spirit, "pregnant with celestial fire," has "kept the noiseless tenor of its way along the cool sequestered vale of life," unnoticed and unknown. During our contest for national existence, which has been truly termed an era "that tried men's souls," many noble sacrifices were made and feats of valor performed by humble individuals, who were not so fortunate as to attain to the distinction of an historic memorial, but whose deeds of patriotic devotion have been modestly recited to their children by the fireside, in the plain and impressive language of truth and kindled emotions, that have ripened, in manhood, into splendid ornaments of human character. Such a parentage will never be undervalued as long as

"An honest man's the noblest work of God,"

nor as long as true greatness consists in surmounting great obstacles with small means, and successfully resisting temptations to crime, which always thicken around a humble and straightened condition of life, by the force of moral principle.

Education, directed to conversation, will afford valuable assistance to our aspiring youth in the difficulties they encounter, emanating from a want of early culture under the parental roof. This, however, is only one of its smallest advantages. There are many others of much greater moment.

Let me occupy a few minutes of your time by inquiring, whether conversation is of sufficient importance to merit a place in a regular course of studies. If I am not mistaken, it is entitled to one of the first.

Of the community, few are speakers and writers; all are conversers.\* The sum of time occupied, and the amount of informa-

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\* The writer has ventured the use of this word in his address, on the authority of the *Encyclopædia Americana*, though it is not found in the most



tion communicated, by formal addresses and writing, is very small in comparison with that occupied and communicated by conversation—and this remark is also correct when applied to the educated. Of those who have received diplomas from our colleges, a small number only are orators and authors; but all are colloquists. If not distinguished by their speeches and writings, they are at least known in their vicinage by their abundant and loud talking; and the knowledge and entertainment derived from their familiar discourse, I venture to assert, far surpasses, in extent, that obtained from their oratorical and written performances.

Many of our most finished and gifted scholars are wholly deficient as conversers. With minds richly stored, and hearts full of the warmest and kindest feelings, they are reserved, silent, and awkward in social life. Often, men who can command “th’ applause of listening senates,” are hardly endurable in conversation. The animation, power, and fire of the orator droop when met by the ease and playfulness of agreeable conversation. The sprightly, entertaining, and learned author is also often dull and uninteresting amid the purity, simplicity, and liveliness of a social party. Society loses vastly by these defects in those who ought to ornament, cheer, and instruct it—and all will admit, that they spring from an imperfect education, and are curable by culture.

Conversation has accompaniments, which ought to entitle it to attention, if not worthy of it in itself. It always brings with it good manners, and imparts light, and life, and cheerfulness, and joy on all around. It may be regarded in social intercourse, if I may be allowed the illustration, as the one thing needful; and if possessed, all others will be added unto it.

The value of conversation will appear more evident, when we consider its use in the learned and other professions.

One of the most interesting and important duties of a minis-

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approved lexicons. The only word they contain of a similar signification is *colloquist*. In one sense it may designate a person skilled in conversation, though that is not its general use. The writer thinks he has seen *conversationist* and *conversationalist* used by good authority; but not being able to recall it, has not used them.

The want of an appropriate and approved word in our own language, to designate a person engaged and skilled in conversation, shows of itself how little attention has been given to the subject.

ter of the gospel is visiting the members of his congregation, and conversing with them on subjects of no less moment than the grave, immortality, and the judgment. His public duties do not surpass, in extent and responsibility, if they equal, those which are retired and social in their character. The latter, indeed, are often, perhaps I may say generally, more delicate and difficult. He is frequently called to instruct and console, when the gentle breathings of a timid and pious spirit have gathered confidence to present themselves in declarations of anxiety and hope—when a stricken conscience is racking the bosom of an unbeliever with the agonies of despairing guilt—and when the body and mind are feeble, and the spirit is only waiting for the hour of its dismissal. With what additional charms do the consolations of the gospel meet the ear of the anxious listener on such occasions, if they are clothed in pure, intelligible, and appropriate language! Beside striking occasions like those which I have mentioned, clergymen are constantly in situations which enable them, if they have power and skill in conversation, to draw the thoughts and feelings of those with whom they associate from the world, and direct them to holier and higher objects—and great is the responsibility of that man, who enters and continues in the ministry without this qualification. If any one thinks lightly of this remark, let him review the life and ministry of the Saviour, and he will find that the gospel was given to a fallen world, principally in familiar discourse.

Let me mention in this connection, that although the sincere aspirations of the unlettered are as acceptable to our Heavenly Father as those of the learned, yet it is but becoming reverence in those who assemble around the family altar, to devote some attention to qualifying themselves for presenting their petitions in correct and solemn language.

Young gentlemen, who intend to pursue the profession of law, and their parents, friends, and instructors, generally suppose, that if they are able to acquit themselves creditably in court and before the public, their success is certain. This is a mistake. There are two prerequisites. One is, to gain the favor and confidence of the community, so far as to be entrusted with reputable business—and the other, to make the necessary preparation. To do either, conversable talents are required—to effect the first

obviously; and when it is considered that preparation, particularly for trials, is made principally by consultations with clients, it is manifest, that readiness in conversation is of great service for that purpose. But only a small part of professional business is done in court. If a gentleman, actively engaged in his profession, would keep a diary, and carefully note the manner in which he spends his time, he would find, that by far the greater part of it is spent in conversation. It would, perhaps, amuse, but certainly not instruct you, to show how so much time is thus spent. Moreover, members of the bar are continually thrown into situations, and often of the most interesting kind, in which colloquial powers are not only useful, but indispensable. Obligated as they are to converse constantly, and with persons of education, and on a great variety of topics, it is impossible to estimate the disadvantages to which they are subjected, by a want of tact and talent in conversation.

The physician, engaged in investigating the origin and nature of the diseases of the human body, and administering remedies for their relief, appears to a casual observer to require nothing to obtain the highest honors of professional skill except a knowledge of the science and practice of his profession. But when his professional duties and career are examined with scrutinizing attention, it will be found that a large portion of his life is passed in familiar discourse, and that talent for conversation is essential to his usefulness and success. To obtain business he must render himself agreeable both to his patients and their friends; and for this purpose must have good manners and entertaining conversation. To cure, he is often obliged to cheer and animate his patients by lively sallies and pertinent anecdotes. He cannot do this well without colloquial talent of the first order. His inquiries are generally addressed to the sick, who are sensitive and feeble, and his instructions given to anxious relatives and attendants. His language ought, consequently, to be mild and precise. It also becomes his duty frequently to commune with the dying, and prepare them for the doom which awaits their disembodied spirits; to console the afflicted; advise the orphan and the widow; and teach submission to the decrees of Heaven. More might be said, but who does not perceive the value and necessity of good conversation to a physician?

The farmers, lords of the soil and real sovereigns of the country, would find their usefulness increased and influence extended by cultivating their colloquial talents. The works of nature are always before them in all their freshness and beauty, awakening pure and elevated emotions, and filling their minds with just and lofty conceptions. It seems an abuse of the privileges of their enviable condition not to acquire facilities for communicating, in social intercourse, their thoughts and feelings in an enticing form.

The merchant would soon discover his business extended, his gains increased, his judgment the more respected, and his happiness promoted, if he would qualify himself to converse agreeably.

The mechanic, too, would find his customers increase in number and quality, if he was able to address them in pure English correctly pronounced.

There is a large body of men in our country who devote themselves to the instruction of youth, and the greater part of them are well educated; and yet it would amuse even themselves if a stenographer should attend them while engaged in their duties, take their language verbatim, and afterwards exhibit it. Instead of being models in this respect, after whom their pupils should copy, if they were faithful to their trust, their first precept would be not to follow their example. There are numerous and praiseworthy exceptions to this general remark, and it is hoped they will augment until pure and polished elocution is as universal among instructors as it is now rare. Gentlemen engaged in communicating knowledge ought, of all others, to use language correctly and skilfully. Learned and critical observations on the Greek dialects are often made in bad English, and splendid demonstrations of mathematical problems, in language to apply the rules of syntax to which, would require all the skill of the demonstrator. All must admit that high colloquial powers are an essential qualification of an instructor.

In domestic life the charms of conversation find a natural soil and genial clime. No picture is more beautiful to the moral eye than an assembled family interchanging with artless confidence their thoughts, and feelings, and wishes, and hopes, in pure, correct, and unpretending language. How the moral beauty of such

a scene is heightened by a chaste and elevated style of conversation ! This is no picture of the fancy. It is attainable by only a little attention on the part of the heads of the family. If they are careful to use always correct and appropriate language, all will follow their example, from the little toddling lisper to the full-grown youth returned from school. No one fully deserves the responsible trust of training up a young and tender family, unless able to speak correctly his own language. Often has the American orator, in the unpremeditated career of animated debate, uttered some thought, or pronounced some word, impressed upon him in his childhood, that crimsoned his cheek with a blush.

If we have any great project to execute, and wish to interest others and obtain their aid, how essential it is to possess the faculty of communicating our views in a perspicuous and acceptable manner. In general intercourse with society, talents for conversation are indispensable. We must possess them if we wish to instruct, please, or influence others. Good language never displeases, and it becomes all conditions of life ; but the want of it is oftentimes unpleasant to those accustomed to it, and is generally evidence of an uncultivated mind. Almost all light works of taste and fancy are given to the public in a colloquial form, and no stronger evidence can be adduced that good conversation is adapted to, and ornaments every sphere of life, than the fact that Sir Walter Scott, in exhibiting the great diversity of human character, which he has in his lighter works, and chiefly by making the actors disclose their own characters by their conversation, has not used an expression which ought to offend the most delicate ear.

Time will not permit me to exhibit more fully the importance of conversation, nor is it probably necessary for my present purpose. All, I trust, are convinced of its value, and that, if practicable, it ought to be an object of education. Nor will the limits of this discourse permit me to discuss the practicableness of a plan or course of instruction for that purpose ; nor, if the occasion was proper, would it become me to do so. That duty belongs to others better qualified to perform it. But I will venture to ask, if it is more difficult to devise a mode of instruction in conversation, than in oratory or writing ?



At the last annual commencement of this college, a classical, instructive, and impressive address was delivered before your societies, the principal aim of which was to present to the public the wants and resources of this western country "with regard to the higher branches of a liberal education." In that address the pretensions and capabilities of this institution were ably vindicated, and the "leading feature" of its plan of studies shown to be "practical utility." The "English course," which this college adopted at the very commencement of its operations, was new, and, as I understand, deemed a hazardous experiment. But the result has shown the wisdom of its projectors. It has been approved by practice, and adopted by several other literary institutions.

In an address delivered under the auspices of the liberal and enlightened guardians of this institution, I hope it will not be considered utopian to suggest whether the "practical utility" of a liberal education might not be promoted by adding to it a course of instruction directed to improvement in conversation. If the suggestion is injudicious, and will not bear the test of examination and practice, it may perhaps attract attention to the subject, and thus render some service to the great cause in aid of which it is made.

In conclusion, young gentlemen, I will take the liberty of saying to you that, however extended your course of studies, faithful and capable your instructors, and great your advantages, your acquisitions at last must depend on your own efforts. Nor must they be made coldly, as mere performances of duty. If you would be learned, useful, and distinguished, you must seek knowledge with ardor and animation. "The torch of genius must be lighted at the altar of enthusiasm." Your Alma Mater is located in a delightful region, where nature has shed her choicest blessings, in the midst of fertility and beauty, and on the bank of a limpid and splendid lake. You ought to catch the spirit of such scenery, and in your social intercourse be bland, cheerful, and benignant. But after having obtained all the benefit which a good education can confer, you will find that an intimate and comprehensive knowledge of the relations which exist between the Creator and the creature, and of the duties



which result from those relations, forms the surest and best foundation of interesting and instructive conversation, and that,

“ When on life we’re tempest driv’n,  
A conscience but a canker,  
A correspondence fixed wi’ Heaven  
Is sure a noble anchor.”

## NOTICES OF THE PRECEDING ADDRESS.

By reference to an advertisement contained in our paper of to-day, it will be seen that the address delivered by Samuel A. Foot, Esq., before the societies of Geneva College, is published, and ready for sale at this office, and at the several book-stores in this village. We conceive that it is entirely unnecessary for us to enlarge on the merits of this production, as we subjoin the highly commendatory and simultaneous remarks, in which we fully concur, that were made by very discriminating and competent persons present on that occasion.

[An extract from some observations written by a scholar and gentleman, which appeared in the Geneva Gazette and our own paper on the 8th instant:]

“After the regular official exercises were finished, Mr. Foot, of New York, delivered an address to the two college societies into which the students are formed. His subject, as we should state it, was *the eloquence of conversation*. Learning that it will be published, we make no other remark than that Mr. Foot was listened to with deep attention, nearly an hour, by a delighted audience.” — *Geneva Courier*, Wednesday morning, August 29, 1832.

“The address also before the Euglossian and Alpha Phi Delta societies connected with the college, by Samuel A. Foot, Esq., of New York, was very interesting, being somewhat original in its conception, polished in its diction, and most happy in the delivery.” — *Ontario Repository*.

“An address was also delivered to the two societies of the college, by Samuel A. Foot, Esq., of New York, upon the necessity of cultivating, as a part of the education of young men, the conversational powers. It was truly interesting and instructive, being in itself illustrative of the pleasure that a well-conducted conversation invariably excites.” — *Cayuga Patriot*.

“We should be doing violence to our own sentiments were we to omit to notice favorably the address of Samuel A. Foot, Esq., to the Euglossian and Alpha Phi Delta societies. It was an effort indicative of talents and ability, and although the subject was rather novel, it did not fail to please and instruct by its ingenuity and utility. The subject was the cultivation of the

colloquial powers, and strange as it may seem to many, who are daily deafened by loud talking at every corner of the streets, the faculty of conversing with propriety was shown by the orator to be one of the greatest defects of modern education. We should be pleased to see the oration of Mr. Foot in print, that others may be as much gratified as we were by the illustration of a subject which has seldom been discussed, and the importance of which is seldom considered."—*Vienna Republican*.

"The address to the two societies of the institution was the work of Samuel A. Foot, Esq., of New York. The subject of it was elocution in all its applications to the intercourse of human beings. In discussing it, he displayed much originality. The high importance of *speaking well* he illustrated very copiously in its relations to private life—a great proportion of the pure and elevated enjoyments of which he traced to this source. In the course of his remarks, he suggested to the proper authorities the expediency of introducing among their standing collegiate exercises, one of which, the sole object should be, the improvement of social conversation. Mr. Foot's address was happily written, and delivered with grace and animation."—*Lyons Countryman*, edited by Myron Holley, Esq.

CONVERSATION AS A BRANCH OF EDUCATION.—We give below the first part of an address on this subject, delivered before the societies of Geneva College, at the late commencement of that institution, by Samuel A. Foot, Esq., of this city. In our next number we shall give the remainder of the address. It is a subject in which every member of our society, as well as every young gentleman, is deeply interested, and we commend the address to their careful perusal. It has never fallen to our lot to see a more happy enforcement of our duty to cultivate the conversational powers; and we feel persuaded that no young man will rise from the perusal of it without having formed a determination to improve those powers which he may possess as far as practicable.—*Young Men's Advocate*, Thursday, September 27, 1832.

An Address delivered before the Englossian and Alpha Phi Delta Societies of Geneva College. By SAMUEL A. FOOT, of New York.

Nothing appears to us so useless and superficial as the numerous addresses annually delivered before little debating clubs in our colleges. We do not, of course, include among these the Phi Beta Kappa or other similar institutions which have risen to eminence and done honor to our country. It is but a few years since these small societies began to appoint orators, and practice has taught us that thus far they have been of little benefit, though attended with a large and needless expense. Of all speeches, not excepting *dinner* speeches, such as these we most heartily despise; and we are not a little pleased to find that the societies of Union College have refrained from making any unnecessary noise in the world by falling in with this almost universal practice. The orator on these occasions seldom presents anything new or useful, but takes advantage of the opportunity to proclaim

his own individual excellencies and extend his fame; and the largest proportion of the addresses which are published contain little else besides compliments, excuses, and good wishes. But we are truly happy to say the one before us is far from belonging to that class. It contains many valuable and novel suggestions. The sole object of the author, to use his own language, was to give his support to the great and controlling interest of our favored country—*Education*. “*Conversation as a branch of Education*,” the subject of Mr. Foot’s address, although new as well as important, was suggested to him by the name of one of the societies which he addressed, “the Euglossian,” which in the Greek signifies “speaking well.” The author first asserts “that thought and vocal articulation are the distinctive characteristics of men,” and explains the necessity of thinking *clearly* and speaking *well*; immediately in connection he beautifully describes the power and use of the human voice, from which we make an extract, expressed in a clear and happy manner:

“An inquirer,” &c.

The author then proceeds to show that “rhetoric, which is the art of speaking well,” includes both oratory and conversation; and after having described the beauties of each, clearly defines the qualities essential to become a good “converser.” Mr. Foot conceives conversation to be of sufficient importance to merit a place among the regular studies, and concludes by exhibiting its value in the learned and other professions. Upon the importance of conversation, he says:

“Of the community, few are speakers and writers; all are conversers,” &c.

In conclusion, we remark, among the many annual addresses before college societies published in this country, we have met with none which, in our humble opinion, will be of more benefit to those for whom it was intended, or the community at large, than the one before us. And we hope soon to see the time when conversation, the importance of which this address so ably discusses, and which has received the attention of some of the greatest men of modern times, may be thought worthy of a place among those studies most essential to become a complete and accomplished scholar.—*The Parthenon*, January, 1833.

The plan which has of late years been adopted in nearly all of our colleges of note, of procuring an intellectual entertainment at stated periods, by inviting some distinguished graduate, or some gentleman of ability, without reference to the place of his matriculation, to address the societies or associations of alumni, has led in a short time to the production of a number of elegant, philosophical, and useful discourses, which are creditable to the country in the highest degree. The gentlemen thus called upon for the occasion, have generally, in a manner as honorable to themselves as it must have been gratifying to those who asked the favor, complied with the request; and the instances are but few, in which their published discourses do not prove the wisdom of the selection; and while they

show a power of thought and outpouring of information and reflection in the speaker, which might not otherwise have found a vent, and which he was, perhaps, himself unconscious of possessing, reflect lustre on the institution from whose halls the call came, and on all connected with it, and excite the emulous ambition of the young aspirants after distinction. Most of those who have officiated on such occasions, have been either professional men, actively engaged in one engrossing business and duty, or in political stations equally monopolizing time. Yet, thus invoked, governors, statesmen, lawyers in full business, divines who make the cure of souls no *sinecure*, and men whose practical way of life would lead to the supposition that their converse with "all the muses" was rare, have stepped forward cheerfully, and thrown off reflections in the form of an address, to a collection of which we may well point with pride. Such are the addresses delivered by Cass, Berrien, Wirt, Forsyth, Clinton, Kent, Verplanck, and half a dozen others that we could name; and many more doubtless that have slipped our recollection.\* If in the poetical exercises which similar invitations have called forth, we have less to boast of, the reason is obvious enough. The poetical faculty is not only rare, but requires much cultivation; whereas good sense and genius are always accumulating materials, which may at any time be drawn upon to advantage, in the form of an academic oration or address. Still there are two or three finished poetical performances, which such occasions have called forth, that are among the best specimens in the stock of what is called American (to distinguish it probably from English) poetry.

The success and the utility of these experiments should lead to their permanent continuance; and it will soon be considered a high honor by even the most eminent men of the land, to be designated by associations of youths, or of graduates who retain a filial attachment to their alma mater, as the orators upon their festal days. Those who have set the example deserve well of the country. Among these is the author of the address, which has been lying for some weeks on our table. We sat down with the intention simply of expressing the pleasure which a perusal of it has afforded. It was delivered by S. A. Foot, Esq., an eminent lawyer of this state, and now of this city, before the two Societies of Geneva College, in August last, at the time of the annual commencement. The name of one of the Societies, the *Euglossian*, suggested his theme to the orator; and he very happily discusses and illustrates the importance, usefulness, and advantage of "speaking well." We will not mar his eloquent introduction, but give it in his own words:

"Thought and vocal articulation are," &c.

It is to the cultivation of the voice, and the habit of using proper words in a proper connection in colloquial intercourse, that Mr. Foot confined his remarks, all of which are full of good sense, pith, and gracefully expressed.

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\* We exclude, of course, the discourses delivered by professors and presidents, of which there are many that are excellent.

The limits within which he was confined as to time, did not permit him to expatiate much upon the habit of indulging in *slang*, which is peculiar to the Americans. Those who know better, adopt words and phrases as being amusing, until they creep into familiar discourse in such abundance that it becomes but a farrago of quotations, certainly from no respectable authorities. Our country is prolific in the manufacture of new words, keeping pace with the establishment of new settlements, particularly in the West, where they usurp the undelegated right of Adam, of naming things which have none that they know of—of making verbs out of substantives which Christians cannot conjugate—and of adopting figurative modes of expression, which may be poetical in fact, but are far from being so in sound. Thus a bankrupt is said to be snagged, a steamboat woods, &c. Try to put “to snag” and “to wood” through the moods, tenses, and persons, and the effect will be somewhat ridiculous. Even the halls of Congress echo to samples of this new tongue; and what was meant to amuse, is set down by some Mrs. Trollope as current rhetorical coin.

But independent of these luxuriations of speech, which show at any rate that we are a new and imaginative people, it cannot be denied that we have a vile habit (though we came naturally by it) of imitating the English, in abusing the language of our forefathers, which is a great deal better tongue than they who do so deserve to have the privilege of using. While such awkward verbs as “progress,” and “digress,” and such foolish ones as “jeopardize,” are of English origin, we attempt to take many liberties in an equally ignorant spirit. A recent traveler says, he saw a sign in this city on which was inscribed “locks percussioned here,” and it is possibly true. It might, however, have been an English gunsmith, and that is very probable.

A vaulting ambition, too, on the part of those who are apt to confound hard words with a show of learning and of profound sense, has filled the language with an illegitimate collection of words with unwholesome fungous excrescences growing out of them, which embarrass speakers and writers, often from a want of reflection.

We are particularly struck with an instance in point in the address before us. The speaker mentions in a note, apologizing for the use of the certainly ungainly word “converser,” that he could find no other than the detestable term, or rather, no term, “colloquist,” to express his meaning. And he mentions that the want of a good word in our language “to designate a person engaged and skilled in conversation, shows of itself how little attention has been given to the subject.” Now we apprehend that our language is more happy in this respect than the tongues derived principally from the Latin.\* *Parleur*, *hablador*, &c., denote in common acceptance a great talker; but a talker in English does not. We say a good talker, an

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\* The French, indeed, are happy in the word *causeur*, which we can very properly translate by “talker.”



agreeable talker, a great talker, &c. It is distinguished from a prater, a proser, &c., very accurately. Why then should we agonize to make out of a Latin word such an unfashioned one as conversationist, which sounds very fine, no doubt, in some ears. At any rate we have heard it used and seen it in print. Again, though "wrangler" in English does imply something of a broil, we have "disputant" and "polemic," at a cheap enough rate, and both words of unexceptionable family. Who then would be guilty of the nauseous monstrosity "controversialist," as many writers, both English and American, have been? So the word "writer," in good old English and good modern English, in its primary and usual sense, means one who composes. Yet the word "composer" troubles many, who think it prettier, though it means nothing unless connected with the subject of composition. And we shudder to say, but it is true, that we have met, in books devised by schoolmasters, with the nondescript atrocity "composuist." Heaven help the unfortunates who have got such words in their mental vocabulary! The man who could make them must be past praying for.

All this is, however, by the way. Of the high qualities essential to good conversation, as they are to good oratory, Mr. Foot, with Cicero and Quintilian, mentions moral principle and pure and cultivated taste as the two most prominent. He points out the superior advantages as to improvement in conversation, which those liberally educated in England enjoy over the sons of our yeomanry and trading and professional population; advantages which might in some measure be attained by a proper education of those who are engaged in the business of instruction. Their deficiency in this respect is adverted to in terms of apology as well as censure; but it is a fact, and we should not be mealy-mouthed in speaking of it. Mr. Foot also adverts to the embarrassment which fluent extemporaneous speakers often labor under, in expressing themselves happily and without hesitation or affectation, in well regulated familiar society. The importance of ease and propriety in conversation to professional men of every class, and to gentlemen in every situation in life, is well illustrated by him.

There is in the village of Geneva a school conducted on what is called the patriarchal plan, of which Mr. William Kirkland is principal, in which improvement in conversation, by a constant attention to the language of the pupils, and by exercises, is specially aimed at. Were this the practice in all primary schools, and were all professors and tutors to follow it up by attention to their own habits of expression and enunciation, another generation would exhibit a better set of talkers, and, of course, a more essentially refined and polished race. Correct habits of speech can only be obtained by a cultivation of the taste; and a difficulty of utterance and of finding proper words without effort, is a principal source of awkwardness in all companies. The idea of a separate professorship for the purpose of giving instruction in talking, and treating it as a distinct art, though thrown out by Mr. Foot, seems to have struck him as incongruous, since conversation should be under no other shackles than those of habitual good taste



and the restraints of intelligent society. The professor of rhetoric, however, should consider it as a proper subject of his peculiar attention.

We cannot do better than refer those who wish to read a discourse which illustrates its own theme, and while its style does not fall below the propriety of an academic exercise, might almost serve as a model for eloquent conversational instruction, to that before us. Those who have heard the orator himself at the bar or in public assemblies, well know that in the management of a melodious voice he is also a model for those who wish to acquire a graceful, and at the same time emphatic elocution, in which few are sufficiently formed by nature to equal him, but which all may imitate with advantage.

We must close this desultory notice, which we have been strangely tempted to prolong. The address is for sale at the bookstores of Messrs. Carvills, Peter Hill, and Jonathan Leavitt.—*New York Commercial Advertiser*, Friday Evening, September 21, 1832.

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No. XVII.—VOL. 1, p. 146.

*True Mercantile Character, and its Influence on our  
Political Institutions.*

*A Lecture delivered before the Mercantile Library Association.*

NEW YORK, March 18, 1833.

SAMUEL A. FOOT, Esq.

DEAR SIR:—Having been present and heard your lecture delivered before the “Mercantile Library Association,” on the subject of “The Influence of Mercantile Character on our Political Institutions,” and believing that its publication would be serviceable to the community, and especially to the merchants and clerks of this city, we take the liberty of requesting a copy for that purpose.

With much respect, your ob’t servants,

AB’M G. THOMPSON.

ELI HART.

WM. HOWARD.

JAS. BOYD, Jr.

MOSES ALLEN.

JOS. B. VARNUM.

NEW YORK, *March 25, 1833.*

GENTLEMEN :—I have had the honor of receiving your letter of the 18th instant, requesting a copy of my lecture for publication, and am gratified to learn that you approve of it, and with pleasure comply with your request.

Very respectfully, your obedient servant,

SAMUEL A. FOOT.

TO MESSRS. THOMPSON, HART, HOWARD,  
BOYD, ALLEN, and VARNUM.

LECTURE.

*Gentlemen of the Mercantile Library Association :*

Your kind and unexpected partiality has conferred upon me a favor, for which you will please to accept my thanks, by giving me an opportunity to step aside from my professional walk, and for a short time apply my thoughts and efforts, such as they are, to the promotion of the object of your association—*the moral and intellectual improvement of the mercantile youth of our city.*

“The influence of mercantile character on our political institutions” is the subject which was proposed to me for the discourse which I have had the honor of being requested to deliver. When first presented, it appeared an easy, pleasant, and useful theme to discuss. But when dissected, and subjected to close thought, I found it impossible to treat it in a manner satisfactory to myself, and I fear it will prove uninteresting and uninteresting to you.

The term “mercantile character” presents to the mind a very general and an indefinite idea. There are as many grades of mercantile as of human character. It comprehends the bold, adventurous, generous, and enlightened operator, who embraces the marts of the world in his plans; and also the sly, cautious, cringing, and avaricious shopman, who would chuckle at a good bargain on the sale of a yard of ribbon. While the character of the former would exercise a most benign and happy influence on our political institutions, that of the latter would bring disgrace upon all institutions—political, moral, and religious—under which he had been educated, or by which he was protected. It would not be a profitable use of our time, nor do I think it would

meet your expectations, to examine and explain the different kinds of influence which the two characters mentioned, if they prevailed in our commercial towns, would exercise upon our political institutions. The mercantile character, intended and designated as the topic for consideration, must be that which merchants would sustain, who, having been first properly educated, engaged in commerce with laudable views, and prosecuted it upon correct principles. Before we can determine what influence such character would have on the institutions of the country where it existed, we must ascertain what it would be; and to do that, it is necessary to inquire, first, into the origin, progress, and objects of commerce, and see whether its pursuit elevates or degrades the human character.

*Origin and Progress of Commerce.*—The wants of man were the origin, and are the cause, of the continuance of commerce. It began in the simple transaction of a barter for necessities. The inhabitants of one region of country required for their subsistence the productions of another region, and the inhabitants of the latter required for the same purpose the productions of the former. These mutual wants, and ability to supply them, lead, of course, to an exchange, the sole object of which was to supply the wants and promote the physical comforts of the contracting parties. As the population of the earth increased and intercourse was extended, this traffic by barter was enlarged, and ultimately comprehended within its range the different countries of the inhabited parts of the world. How single its character, how beneficent its purpose, when conducted solely to minister to the necessities of destitute man!

As society advanced, however, and knowledge was obtained of the products of different latitudes and countries, factitious wants arose, to supply which by mere barter became burdensome, if not impracticable. This state of things created the necessity and suggested the use of a circulating medium, by which, applied in its simplest form, the productions of one country are obtained for the use of another, without the expense and trouble of transporting the productions of the latter to the former, for the purpose of exchange. While traffic was confined to the supplying of wants, nothing more was obtained by it than could be readily and advantageously used. Hoarding the products of the earth but to

decay, would have only produced disease and death. When, however, a circulating medium was adopted, it being a portable, convenient, and enduring representative of value, and in its nature and use holding at will the productions of the world, men began to thirst for its possession, to hold it for ulterior objects, and the desire of it led to the prosecution of commerce for profit. The gains thus obtained were represented, used, held, and preserved by it. After traffic had acquired this stimulant and facility, it spread rapidly over the accessible portions of the earth; and after it was further aided by the invention of the mariner's compass, it knew no bounds save the borders of the world.

Although the selfishness of men, their love of wealth and power, have induced them to pursue and extend commerce for the riches which it yields, still, let it be remembered, that the basis of it is the wants of one section of the earth, and the ability of another section to supply them. Who does not see the wisdom and goodness of the Creator strikingly displayed in this arrangement? It compels the inhabitants of different countries, and of different sections of the same country, to seek intercourse with each other; and who can say that it was not designed as the means by which the Gospel and the light of divine revelation were ultimately to be spread through the world?

*Objects of Commerce.*—This branch of our subject requires a full examination, and deserves your serious attention. The object of commerce is generally supposed to be the accumulation of wealth; and it is prosecuted for that purpose alone by too many of our active and intelligent merchants. Do not think that it is my intention to denounce reasonable, honorable, and even high efforts to obtain a fortune. I only design to draw your attention to the thought that commerce should be pursued for other objects than the mere profits which it produces, and also to the thought that, when prosecuted for gain, the thirst for riches should be tempered and controlled by elevated, enlightened, and philanthropic views. While the merchant is wakeful with anxiety for the success of his projects, and the clerks in his counting-room are dreaming of the plans they will execute, and the treasures they will gather, when they attain to the control of a mercantile establishment, it may be useful to both to pause and reflect upon the objects for which they, as intelligent, account-

able, and immortal beings, have a right to devote their mental and bodily energies to the acquisition of wealth.

The acquirement of property, and the prosecution of commerce for that purpose, is commendable when directed to the support of ourselves, or to the support and education of our families. When we enter the social compact and become members of society, our first duty is to see that neither we nor ours become a burden to it. It has been said by high authority, "If any provide not for his own, he is worse than an infidel." While every man should admit and act upon his obligation to maintain, rear, and educate those committed to his care, the merchant, who has put afloat upon the bosom of the ocean, and committed to the mercy of the winds and waves, the earnings of years to increase his fortune from tens to hundreds of thousands, should recollect that all he gains, beyond a competency for himself and family, will pollute the fountains of his domestic joy and peace, and bring down his gray hairs prematurely to the grave.

Property may also be laudably sought, and commerce pursued, to obtain the means of usefulness.

However highly educated a man may be, if he is oppressed with poverty, and driven to spend his efforts in supplying his physical wants, he loses the station in society which he ought to occupy; his sphere of action is abridged; his influence ceases; and instead of cheering and ornamenting the circle of his friends, he becomes a burden to them, and finally sinks into obscurity.

A proud and lofty spirit cannot brook dependence, nor can a mind, rich in imagery, stored with various learning, abounding in pure thoughts and elevated conceptions, pour forth its treasures in clear and pure currents, when pressed by want or pursued by creditors. Nor can an ardent, disinterested, and philanthropic heart beat freely and swell with generous desires to promote the welfare of mankind, if checked, restrained, and tortured by the tyranny of straitened circumstances. Wealth may then be sought—

" Not for to hide it in a hedge,  
Not for a train attendant—  
But for the glorious privilege  
Of being independent."

The philanthropist, if talented, and ardent in his desire to alleviate the sufferings and promote the happiness of his fellow-creatures, may accomplish great and striking enterprises of charity; but if, in addition to his talents and ardor, he possesses the advantage of fortune, he has the means of executing his own generous designs. If his feelings are awakened by touching sights of distress, and his heart burns with anxiety to relieve it, his efforts will not be restrained, nor the current of his warm and lively sympathy chilled, by being refused the means of relief by those who possess them, for he can supply them out of his own abundant treasure. How incomparably greater is his power of gratifying his philanthropy if he is blessed with the possession of wealth; and who would not feel himself ennobled by a search after riches to spend in good-will to man?

The Christian, too, if I may be allowed to canvass his motives and aims, has strong and controlling inducements to obtain wealth. His rule of action is that he holds it as a steward for the Great Giver of all things, and that he shall be required to render, on the final day, a strict and full account of his stewardship. Although an ever wakeful and active desire to serve his Master, and the silent eloquence of a holy and lovely life, may effect great things for the cause which he has espoused, yet he must have property if he would feed the hungry, clothe the naked, send the Gospel to the destitute in our own land, or pour the genial rays of revelation

On "Greenland's icy mountains,"

On "India's coral strand,

Where Afric's sunny fountains

Roll down their golden sand."

Other instances might be put, and other illustrations given, of the correctness of the proposition, that wealth may be laudably sought and commerce prosecuted, to acquire the means of usefulness; but it is so clear, and commends itself so readily to the candid mind, that we may consider it established, and proceed to topics less acceptable, but probably more conducive to our improvement.

A liberal and enlightened pursuit of wealth is too apt to degenerate into the sordid and debasing passion of avarice. A



mere love of money, unmitigated by the noble objects to which it may be applied, is the basest idolatry—an unmixed spirit of accumulation, the meanest vice. It increases by gratification, grows by indulgence, and is as insatiable as death. It is also encroaching and absorbing in its tendencies. It lays its iron hand on every impulse and emotion of the heart, withers the energies of the mind, and checks the pure and lofty thirstings of the soul. In a word, it brings heaven-born, immortal man, down to a cringing and creeping worm of the dust. Let, then, the liberal and enlightened merchant beware of the spirit which actuates him in planning and executing his projects of gain; and while he gives full scope to a generous and manly spirit of enterprise, let him watch and subdue the first effort of avarice to enslave him.

A raging thirst for gain, deplorable as it is, has been implanted, however, in our bosoms for wise purposes; and although we are bound by obligations, which have their sanction in heaven, to control and subdue it, yet we ought not to overlook the fact that it has stimulated many daring spirits to high enterprises which have yielded benign results to man. It has led the mariner in his frail bark through dangerous and unexplored seas, and opened ways through which knowledge, civilization, and the light of life have reached the benighted, degraded, and idolatrous portions of the earth. Although it has produced these benefits to the human family, it has sought gratification by impositions upon ignorance, the infliction of horrible cruelties upon weak and unoffending victims, by polluting the innocent, by deception in traffic, by the violation of all laws, human and divine.

These observations lead to the conclusion, that one of the true objects of commerce is the acquisition of property, with a view to support ourselves and those committed to our care; to preserve our independence and give freedom of action to our minds and hearts; to relieve the sufferings and promote the happiness of our fellow-immortals; and to send the sweet influences of the Gospel to enrich, like the dews of Hermon, the desolate portions of the earth.

The supplying of the wants of the human family is another of the true and laudable objects of commerce. Every civilized nation is dependent on it, for many of the elegancies, comforts,

and even necessities of life. In our gifted country, where we have great variety of climate, soil, and production, and where the wants of man are probably more fully supplied by native products than in any other part of the civilized portion of the earth, we are obliged to depend on our commerce for many articles of both food and raiment. Should we remove from our houses, persons, and tables, the articles with which commerce furnishes us, we should be almost cold, naked, and hungry. If we look at other countries we shall find a still greater dependence on commerce for the necessities of life. There are thousands, yes, millions of human beings who are dependent upon commercial adventures for their daily food. The enlightened merchant, whose thoughts and feelings extend beyond the accumulation of riches, blends his calculations for gain with philanthropic views; and when forming his plans and opening new channels of trade, aims not only at obtaining profits, but also at the advancement of the happiness of his fellow-creatures. There is no branch of trade in which an elevated spirit of philanthropy may not be indulged. It is not inconsistent with wise plans for gain. Every merchant, when he purchases his stock of goods for the season, may, consistently with the most judicious calculations, consider the nature and character of the wants of his customers, and in his purchases aim at their advantage as well as his own. Indeed, no merchant who has a comprehensive view of his business will freight his ship, order a return cargo, or fill his store, without bringing home to his heart and mind the reflections that he lives not for himself alone; that he ought to have higher aims than the mere acquisition of property; that commerce is a noble and liberal pursuit, and is intended to supply the wants, promote the convenience, and increase the comforts of the human family.

The relieving of a country of its surplus products is also another object of commerce, which ought to enter into the views of an enlightened conductor of a mercantile establishment. Fertile regions, in which the earth pours forth her abundance, are not generally favorable to high-toned morality or superior intellectual endowment. A reluctant soil and a mountain air give clear heads and pure hearts. If, however, commerce comes in aid of a country possessing great fertility of soil, and carries to distant shores her superabundance, she then reaps the full benefit of her

natural advantages. Her surplus productions are not left to paralyze effort, encourage idleness, and sink her in the scale of moral excellence, but industry, activity, and enterprise give life and action to her population. The benefit which a country thus situated derives from commerce, cannot but enter into the views of an enlightened and philanthropic merchant, and form one of his leading motives to commercial connections with her.

The pleasing duty still remains of presenting to you higher and nobler objects of commerce than any we have yet considered, objects intimately connected with the mind and soul of man. One of them is the spreading of knowledge and civilization through the world, and the other, the carrying of the precious and glad tidings of salvation to the benighted portions of the earth.

Knowledge and the arts of civilized life, like caloric, seek an equilibrium. Their tendency is to spread, and shed their emollient and enlivening influences over the earth. Knowledge cannot be confined without an effort, nor even withheld. Its subtle, ever acting, piercing rays will penetrate and illumine the surrounding darkness; and when one country, peculiarly favored by climate, soil, and government, has advanced beyond others in manufactures, agriculture, arts, and sciences, she will impart her precious treasures, and be the richer for the gift, unless the avenues of transmission are closed. These avenues are commerce. Every vessel which sails from her ports is freighted with light and life. She carries by the wings of the wind to less favored parts of the earth, mechanical skill, the arts and sciences, and where she makes her port and unloads her cargo, the moral desert she has entered buds and blossoms as the rose.

Give commerce extension and activity, and the efforts of the human mind will be equally felt through the world. The poetic breathings of Iceland will be heard on the islands of the South Sea. The intellectual wonders of Newton and La Place, the sweet and chaste beauties of Scotland's novelist, the moral sublimity of the character of our Washington, the hissing and floating prodigies of our Fulton, will be heard, seen, and enjoyed in every clime.

We may assume, without further illustration, that one object of commerce is to extend knowledge and civilization over the

earth, and this object ought to occupy a large portion of the thoughts and reflections of every person engaged in its pursuit.

Another object, and the last I shall bring particularly to your attention, has been already mentioned. It is the spread of the Gospel through the world. This is a theme on which a holy soul, wrapt in visions of Christian love, delights to dwell. But it becomes both the occasion and the speaker not to open its rich fountains and suffer its sacred streams to flow. We must content ourselves with a more limited range of thought; but it will satisfactorily show us that commerce is one of the principal agents for sending the glad tidings of salvation from border to border. Not only do the ships of the merchant carry the heralds of the cross from Christian lands to the uttermost parts of the earth, but the channels of trade, whether internal or external, are adorned and illumined by the pure principles of the Gospel. Commerce is the arteries of the world, and though there flows through them avarice and crime, yet there is sent forward, also through them, at every pulsation, a stream of pure and undefiled religion, which enriches, enlightens, and exalts the soul. Active and unrestrained communication is the great means which the Author of the Christian's hope has provided for spreading its cheering influence among all his creatures. A limited and cursory view of what is daily passing around us must convince all, that the bold and rapid movements of the Christian world are owing, in a great degree, to the increased facilities of circulating information, and that commerce is the chief of these facilities. No merchant who bears the moral image of his Creator can repel the benign influence of the reflection, that the business he is prosecuting is the efficient means which Infinite Wisdom has furnished for sending the Gospel of His Son to the world; and that every adventure he plans, every ship he freights, every sale he makes, and every order he supplies, in a greater or less degree is directed to this great end.

In concluding the branch of my subject which relates to the objects of commerce, permit me to remark how great the mistake, how limited the views, of those merchants who overlook the elevated, philanthropic, and ennobling objects of commerce, and think its channels are wholly filled with the waters of the Pactolus to turn their wares into gold.

Our next step, to ascertain what is true mercantile character, is to inquire what kind of education a young man ought to obtain who intends to pursue commerce. Of one thing he need have no apprehension, that is, that he will be too well informed on any subject. He may, without hesitation, if his taste and inclination so lead him, exhaust the treasures of Grecian and Roman literature, investigate the principles, study the history, and enjoy the beauties of Grecian sculpture and architecture, search out the excellencies and dwell with rapture on the best pieces of the modern masters of painting, become familiar with English and American literature, and store his mind from those rich and exhaustless fountains of learning. Should he devote himself to these laudable and elegant pursuits, he would find that "knowledge is power," whether possessed by merchants, mechanics, or members of the learned professions. But there are other branches of knowledge, an acquaintance with which is indispensable to a respectable merchant; and the most important of these I will proceed to mention.

An accurate knowledge of geography is essential to a merchant engaged in either domestic or foreign trade. He must conduct his business to great disadvantage, and often commit ruinous mistakes, unless he is intimately acquainted with the locations, relative positions, and comparative importance, commercially and politically, of the ports, maritime and inland towns, of his own and foreign countries.

He ought also to have full and correct information respecting the natural productions and the manufactures both of his own and foreign countries, and of the different sections and towns of each; at what ports the surplus products, either natural or artificial, of any town or district, find a vent for exportation; and what articles are in demand at that or neighboring ports, and may be thus directly or indirectly exchanged for them.

In every commercial state or nation, so far as my information extends, there is a body of men whose peculiar duty and employment is to study, expound, and aid in administering the laws; and all are in the habit of consulting them when questions arise relative to the rights of property, or doubts exist as to the legality of any transaction.

Although the profession of the law affords facilities and gives



material aid to men of business, still a merchant ought to have a general knowledge of national law and of the law of his own country, and a thorough knowledge of mercantile law. He should also be acquainted—if not minutely, at least to a considerable extent—with the commercial regulations of foreign countries. And a merchant in this city should, in addition, have an accurate knowledge of the laws of our different states which relate to the securing and enforcement of the payment of debts. And allow me to remark in passing, that this Association would probably render an essential service to our commercial community if they would make efficient arrangements for a course of lectures on that subject.

Merchants, and particularly those engaged in foreign commerce, should bestow particular attention on foreign languages. An American merchant ought, at least, to understand Spanish and French. Not to converse, however, with his counsel (for I regret to say that in most instances that would be impracticable), but to interpret and translate for him.

No gentleman can engage in mercantile business with propriety without being well acquainted with the currencies of different countries. The necessity of this knowledge is most obvious, and I presume there is scarcely a merchant in this city who does not possess it.

A knowledge of book-keeping, both by single and double entry, is equally necessary. Without a thorough knowledge on that subject, no person should presume to engage in any branch of commerce. A merchant's books are to him as a rudder to a ship. He can no more conduct his business without them than the pilot of his ship without a rudder.

A merchant should also have a full and accurate knowledge of his own language, and be able to speak and write it correctly.

In the enumeration I have thus given, it has not been my intention to embrace every kind of knowledge to which a mercantile education ought to be directed, but, as I have said, to indicate the most important. When a young gentleman who intends to pursue a mercantile career has accomplished himself in the different branches of knowledge which I have mentioned, he will have no difficulty, without the aid of others, in selecting those I have omitted. My design has been to call your attention



to a sufficient number, to show the kind of education which a merchant should obtain.

Keeping in view our object, the ascertainment of genuine mercantile character, we will now inquire into the manner and principles upon which mercantile business should be conducted.

This part of my subject would have been better treated by a merchant of experience and intelligence. My want of practical information makes me diffident of my ability to do it justice; still, I freely offer what few reflections have occurred to me.

Integrity is the polestar by which every movement should be regulated; not only because that would be right in itself and in accordance with the laws of God and man, but because it would be the surest guaranty of success. Dishonest practices have never yet led to permanent fortune. They are sometimes temporarily successful, but the *eclat* gained by them is ephemeral, and soon passes away. A spirit of integrity is orderly, uniform, firm, and persevering. The stern and undaunted brow which it bears silences opposition, repels dishonesty and trickery, and often protects the possessor from attempts to defraud him. Let your thoughts pass around the circle of your mercantile acquaintances. Can you designate one who has met with success and obtained it by dishonesty? That "honesty is the best policy" is a homely maxim; but plain as it is, it is full of moral sublimity, and allies the man who adopts it as a rule of action, to Infinite Purity.

A mercantile business should always correspond in extent with the capital invested. Justice to creditors not only requires this, but other and prudential considerations also demand it. If a man would conduct commercial operations successfully, he must always have money at command, and not extend himself so far as to put it out of his power to avail himself of favorable opportunities for purchasing, or undertaking new and promising adventures. Nor ought he in this way to embarrass himself, disturb his repose, disqualify himself for social and domestic enjoyments, perplex his mind, and unfit it for cool and sound calculations.

The worst aspect, however, of overtrading is its dishonesty and tendency to crime. A man whose principles are loose enough to do this deliberately, first begins to *financier*, as the phrase is, which, in plain English, means to resort to shifts to meet his

engagements. His next step is dishonest insolvency and the ruin of many meritorious creditors. To carry himself through this scene of iniquity and force his creditors to an unjust compromise, or obtain his discharge under our insolvent laws, he resorts to falsehood, deception, and not unfrequently, I fear, to awful and corrupt perjury. "It has been truly said that the amount of property taken by theft and forgery is small compared with what is taken by dishonest insolvency. Yet the thief is sent to prison, and the dishonest bankrupt lives perhaps in state."

The moral sense of the community appears to be dull respecting the sanctity and binding efficacy on the conscience of obligations for the payment of money.

Promissory notes, bills of exchange, bonds, contracts for the sale and purchase of goods, seem to be regarded, by too many, as possessing no other efficacy than that which the strict rules of the law give them. This is a very erroneous view of the subject. These instruments contain solemn engagements, on the faith of which property, the earnings of years of industry, the provisions for old age, the means of feeding and clothing families and children are parted with, and he who carelessly enters into them, or fails, except through inevitable misfortune, to perform them, will be called to a fearful account. Society should also denounce him; and the man who has the means, and refuses to pay his debts, should be avoided. Yet we often see him conspicuous among the prodigal, fashionable, and gay; and occasionally in the confidence and enjoying the esteem of the educated, polished, and pure. A merchant should therefore be cautious, and take care not to expose himself to these temptations to crime, by extending his business beyond his means. And to deter him, let me mention the fact, that six out of seven of all the young men who commence business in this city, are unsuccessful, and principally because they extend their business beyond their means.

In sales, great fairness should be displayed, and no falsehood or deception used to enhance prices. Candid answers should be given to questions, and fair statements made of the quality and value of the articles. A salesman should conduct himself in a gentlemanlike manner; not intrude his opinions upon customers, nor stun them with his incessant chatter. His bearing should be mild, respectful, and courteous. How different from this are the offensive displays too often made in our large and respectable

establishments. We frequently find behind their counters young men of genteel appearance, exhibiting antics, and pouring forth a ceaseless volume of senseless chatter, which confuses and displeases the customer, and drives him from the store. These, however, are exceptions to a well-educated and highly meritorious class of young gentlemen.

Having examined and presented to your view the origin, progress, and objects of commerce, the education which should be given to young gentlemen who intend to engage in it, and the manner and principles on which commercial business should be conducted, we are now prepared to consider and exhibit true mercantile character.

You are aware, that the character of a man, or class of men, strictly, consists of the estimate which the public forms, and of the opinions which the community entertains, concerning him or them. The term, however, has a broader meaning, and indicates the actual qualities of a man; and we use it in this broader sense when we speak of mercantile character.

Let us inquire, then, what that character is. It will be formed by conducting commercial business in the right manner, on true principles, and for correct objects, and by giving merchants proper educations. We cannot mistake the kind of character which will be thus formed. It must embrace all that is sublime and beautiful in moral excellence.

One of the first ingredients in such character will be lofty, unwavering integrity, strict, punctual fulfillment of all engagements. Sublimity of character is said to consist in that high sense of honor which "no interest and no terror can seduce from any of its obligations."

Another ingredient will be a gentle and philanthropic disposition, indicated by a ceaseless desire to promote the happiness of man. Beauty of character "is that kindliness of feeling, which one look or one sigh of imploring distress can touch into liveliest sympathy."

Another—bold, cool, adventurous activity, displayed in searching out and occupying new channels of trade; planning and executing bold commercial enterprises, and giving devoted and persevering attention to business.

Another—extensive and accurate information on all commercial subjects, and on all other subjects which have a direct relation to commerce.

And another will be, a pure, vivifying, Christian spirit, meek and unobtrusive, but unceasing in its efforts to honor God and do good to man.

These are the component parts of genuine mercantile character.

Hence, a true merchant is a man whom "no bribery of advantage can seduce into the slightest deviation from integrity;" whose feelings of indignation would be roused at a dishonorable artifice; who could not rest under a consciousness of having felt a desire, however feeble, to practice the least deception; who is kind and compassionate, active and devoted to business, intelligent and well-educated, and the affections of whose heart are heightened, chastened, and animated by a pure and heavenly spirit; whose thirst for gain is restrained and tempered by higher and holier thirstings for celestial riches; who meets the reverses of fortune with a spirit of resignation, and whose highest aim is good-will to man.

Who would not honor, and who would not commit their property to merchants possessing such character? What country would not be proud of such citizens? They are not creations of my fancy. Although there are too few, yet there are many such men in the different commercial countries of the world. We need no better evidence of this than the fact, that there are uncounted millions committed monthly to the integrity of man, by credits given, and consignments made.

We have now ascertained what is true mercantile character, and are ready to inquire, understandingly, what influence it has on our political institutions. We shall, however, be aided in the inquiry, by first determining the influence which commerce itself has exercised on countries and their political institutions, where it has flourished.

Our time will only permit us to take brief notices of the most prominent commercial cities and states; but brief as they will be, they will still show us, that commerce contains an active, quickening, and expansive principle, which produces and collects in the place where she takes her seat, wealth and power, arts and sciences, just and uniform laws, liberal and stable political institutions.

The Phœnicians only occupied a narrow border, along the sea-coast of Syria; and Tyre, their capital, was built on a barren

soil. To counterbalance these disadvantages, they had before them the Mediterranean, accessible and commodious ports, and behind them, the firs of Hermon and the cedars of Lebanon, with which to construct their ships. Their commerce, and that alone, soon raised them to an unexpected height of glory, grandeur, and riches. But it was destroyed, and "the noise of her songs have ceased, and the sounds of her harps are no more heard." Yet the Phœnician name will survive, as long as there are organs of speech to pronounce it.

Carthage, a Phœnician colony, by the exhaustless and irrepressible energies of her commerce, disputed the empire of the world with proud, indomitable Rome, and was not subdued till the channels of her commerce were closed.

Alexandria, created by the behest of the conqueror of the world, would have been deserted, and the traces of her obliterated, had not commerce rekindled her vital spark, and raised her to splendor and power.

Marseilles, with no other advantages than her commerce, enjoyed the proud distinction of being an ally of the mistress of the world; and a still prouder distinction in the wisdom of her senate, and the celebrity of her academies of science. She was the brilliant star in the west of Europe, and sent her rays into the darkness which surrounded her.

In modern times commerce has produced the same results. She built Venice in a marsh, filled her with palaces, and covered her with glory.

" I saw from out the waves her structures rise,  
As from the stroke of the enchanter's wand."

Her commerce deserted her,

" And a dying glory smiles  
O'er the far times, when many a subject land  
Looked to the winged lions' marble piles,  
Where Venice sate in state, throned on her hundred isles."

Genoa, her rival, drew her strength and beauty from the same source.

Holland, also, is indebted to commerce for her national existence. The abundant treasures which she gathered from this exhaustless fountain enabled her to resist the repeated attempts which were made to enslave her—and assert and maintain her standing among the nations of the earth.



Who provided England a home "on the mountain wave?" Commerce, her nursing mother.

These instances, and the history of our own times, with which you are all familiar, show clearly, that commerce has a most beneficial influence on human affairs. The prosecution of it is an honorable mode of improving private fortune. It is the surest foundation of national wealth, and strengthens and consolidates states.

But these are not superior benefits to those which commerce bestows, in the improvement of the laws, and political institutions of the countries where it prevails. Indeed, commerce must, and will have, a liberal, enlightened, and uniform system of laws. If the fountains of justice are polluted where she dwells, or tyranny impedes her progress, remedies must be promptly provided, or she will take wings and fly to more genial climes. Civil liberty, the ministering angel of "energy and elevation of mind," is her natural companion, and must attend her, or she will languish and die. They are also mutual supports of each other. The freedom of action of commerce produces freedom of thought, which is the foundation of liberal political institutions. Commerce gave republican governments to Venice, Genoa, and Holland, liberalized the constitution of England, and gave the first impulse to the convulsive throes for liberty in France. Commerce, too, and I respect her for the deed, gave rise to the struggles which resulted in the establishment of our own independence. She would not be shackled, and by her efforts to burst her bands, she brought down the temple of her enemies.

*We can now inquire, with advantage, what influence mercantile character has on our political institutions.* Indeed, the train of thought which we have been pursuing, has already substantially answered that inquiry. It is obvious that true mercantile character can have no other than the most benign influence on our institutions. Plain as this proposition is, however, I shall probably not meet your views and expectations, unless I furnish some direct illustrations of it.

Our political institutions are founded on the inalienable rights of man. The leading principle of them is, to give full and free action to his physical and mental energies, and curtail no more of his natural liberty than is essential to the well-being of society. This is genuine civil liberty. Mercantile character rests



on a like broad foundation, and partakes of the same spirit. The influence which it exerts is consequently in favor of our institutions, giving them support and permanency.

We have constitutions and laws to regulate and secure our rights, yet there is a power in this country superior to them, and that is, *public opinion*.

This subtle, intangible, but really powerful and efficient sovereign is absolute. *Public opinion* are collective terms, and embrace mercantile opinion, which is one of its principal constituents. How important and influential, then, is mercantile character, which forms and directs mercantile opinion? It is fortunate for this country that her merchants, in general, are well-informed and sound in their principles. But how much greater would be our security, and how much more the utility and permanency of our institutions be enhanced if true mercantile character prevailed in our towns?

We are making in this country the experiment of self-government, and are pioneers in that great undertaking. The eyes of the civilized world are upon us, and on our success materially depends the happiness of the human family. Should judgment be passed against us, and the world pronounce our attempt unsuccessful, we could hardly hope to maintain our institutions against the moral influence of such a decision. We require the approbation of the enlightened portion of mankind, to give our form of government a fair trial. Through our commerce and merchants we make the acquaintance of the world, and by them, principally, our institutions and national character are tested. Our mercantile character thus becomes the index of the nation, and points to the position which we hold in the scale of moral excellence and national greatness. The opinion of foreigners, so influential on our institutions, is formed accordingly; and in this way our mercantile character has a direct and powerful bearing on the form and stability of our government.

It has been said, that the mercantile faith of England exceeds all the glories of her policy and valor; and I am happy to add, that it can be said with equal truth of this country, that the energy, enterprise, and integrity of her merchants have commanded for her institutions the admiration of the world.

*Gentlemen*, you cannot but have perceived, that all depends on the kind of character which our merchants sustain. When,

therefore, you reflect, that our national character and the success and permanency of our political institutions are in your keeping, let the thought sink deep into your hearts, and incite you to high and honorable conduct, and to the acquisition of pure and unblemished character.

In no pursuit are talents, integrity, education, and enterprise more surely and amply rewarded than in commerce—and to encourage and stimulate you to efforts corresponding with your responsibility, and the prize to be gained, I will give you a few brief biographical notices of distinguished merchants, whose career and character are worthy of your imitation.

Of all the families who have obtained renown by commerce, no one is more distinguished in history than that of the Medici. They were citizens of Florence, and flourished during the fourteenth, fifteenth, and sixteenth centuries. Their wealth and power were unexampled. This family in less than a century gave four sovereign pontiffs to the church, two queens to France, and to the College of Cardinals more celebrated members than any other house, not even those of sovereigns excepted. They acquired titles of nobility, but were nature's noblemen, and honored their titles, instead of being honored by them. They were faithful and enlightened magistrates, and munificent patrons of learning. They collected and established public libraries, founded and supported academies, and encouraged the arts. The successive members of the family prosecuted commerce on a liberal and extensive scale; and although allied to sovereigns and at the head of the nobility of Italy, they steadily devoted themselves to it, and from that source obtained the wealth, by a liberal use of which, they became blessings to their country.

James Coeur, a native of Bourges, in France, and son of a private merchant, lived in the early part of the fifteenth century. His commerce extended from the city of Montpellier over the Mediterranean. His liberality and disinterestedness were equaled only by his enterprise and success. He embellished the city which was the seat of his fortune by the erection of several costly structures. A fountain, which he erected, still remains, bearing his arms. He also built an exchange, called the Loge, which is still standing. The basso-relievos in medallions, which ornament the front, continue to be admired, and some have even the weakness yet to suppose that they are enigmatical emblems under

which Coeur has hid the mysteries by which he acquired his immense wealth. He was distinguished for his probity and enterprise, and in 1444, his sovereign, Charles VII., called him to his ministry, and placed him at the head of his government. He freely expended his treasures for the public service, and at his own expense, raised and maintained armies for France. In the midst of his greatness he continued to prosecute his commerce, and in that way provided the means with which the public exigencies were met. He was loved and respected by all, and his eminent virtues have placed him, on the pages of history, far above his sovereign.

Sir Thomas Gresham was born in 1519. He was the son of Sir Richard Gresham, who was a merchant, and Lord Mayor of London. Sir Thomas was educated at Cambridge, and then bound apprentice to his uncle, and in 1543 admitted into the Mercer's company. He acquired great credit and riches by merchandise, and was sent to Holland by the government, to manage its pecuniary concerns, which he did with success. Losing his only son in 1564, to divert his mind he turned his attention to public objects, and in 1566, built with his own funds, the Royal Exchange, which was destroyed during the great fire of London; but its successor still bears the same name. He also founded a college, known by the name of Gresham College, and endowed it with an income for the support of a professor for each of the liberal sciences. The college has been converted into an excise office, but the professorships are continued, and the lectures are now given in the Royal exchange. He is called by Hume, "one of the chief ornaments" of Elizabeth's reign.

Our own country has produced several brilliant examples of true mercantile character. I will mention only two or three.

John Hancock was the son of a clergyman, and born at Quincy, near Boston. He was educated by his uncle, an eminent merchant, and graduated at Harvard University in 1755. He then entered the counting-house of his patron and uncle, and on his death, in 1764, succeeded to his fortune and business, both of which he managed with distinguished ability. He took an early stand in favor of the cause of our country; was sent a delegate to the General Congress in 1775; soon after elected president, and presided over that body in 1776, when they declared their country independent, and pledged their lives and fortunes to maintain

the Declaration. Though possessed of everything that could make life acceptable, he did not hesitate to hazard all for his country, and with a bold and steady hand affixed his name to the Declaration of Independence.

He was distinguished for useful rather than brilliant talents. His tact for business and sagacity in discovering the characters of men, qualified him, however, for public station; and his hospitality and beneficence rendered him an object of affection and respect in private life.

Robert Morris was born in England in 1733, received only a common English education, and was placed in a counting-house in Philadelphia at the age of fifteen. He was early distinguished for fidelity, diligence, and capacity in business. He was a leading merchant in Philadelphia at the commencement of our Revolution, and embraced the cause of patriotism with zeal, though with great pecuniary loss. He was a delegate to Congress, and placed on the committee of ways and means. In that situation he rendered the country invaluable services. He also borrowed money for the government on his own credit, and his reputation for probity and pecuniary resources was of immeasurable advantage to our cause. History will place him next to our Washington on the list of patriots who rendered efficient services to the country in our contest for national existence. His financial talents wrought wonders amid the embarrassments of the government; and to him belongs the high praise of feeding and clothing our naked and famished army. What merchant would ask more of this world than to die with the fame of Robert Morris? He received the patriot's rich reward—his country's tears bedewed his cold hearse.

We have received from the publisher, Mr. Jonathan Leavitt, a neat little volume, containing the lecture delivered before the Mercantile Library Association by Samuel A. Foot, Esq., on "True Mercantile Character, and its influence on our political institutions."

A hasty survey of the train of reflection and the sentiments inculcated in this production has convinced us, that the author has conferred a great benefit on all persons connected with trade, especially young men, by allowing the publication of a lecture which was admirably calculated for the good of the audience for which it was written. The importance of commercial pursuits on account of their connection with the highest interests of mankind, the habits of life and character which the merchant is required to establish, both by interest and a regard for the public good, apposite historical facts

and sketches of a few distinguished American merchants, form the principal topics treated on in this little work, which we should hope might be found in the hands of all young men devoted to mercantile pursuits, both in this city and elsewhere.—*New York Daily Advertiser* of 4th June, 1833.

A popular and impressive lecture delivered in this city by Samuel A. Foot, Esq., before the Mercantile Library Association has been published in a beautiful miniature volume of 54 pages by Mr. J. Leavitt, 182 Broadway. It should be in the pocket of every young merchant.—*Weekly Messenger and Young Men's Advocate* of 5th June, 1833.

A small volume, containing a lecture on the "True Mercantile Character, and its influence on our political institutions," which was delivered before the Mercantile Library Association in March last, by Samuel A. Foot, Esq., of this city, has been recently published by Mr. Jonathan Leavitt, 182 Broadway. The lecturer has traced the origin and progress of commerce, but has dwelt principally upon its objects, which he has delineated with great truth and force. It is published in a neat form, adapted to the convenience of those for whose benefit it was delivered; and they will not fail, we trust, to avail themselves of the opportunity to possess the work, nor omit, we hope, to perform the duties which it so eloquently enjoins.—*Commercial Advertiser* of 5th June, 1833.

# NO. XVIII.—VOL. 1, p. 153.

## *New England Society.*

NEW YORK, Dec. 8, 1834.

SIR:—The New England Society in the city of New York, composed of natives, and sons of natives, of the New England states, will celebrate their anniversary on Monday, the 22d inst. In making their arrangements for that event, their thoughts and sympathies are directed with animation and warmth to those gentlemen who, in their birth and education, have imbibed, and in life illustrated, the principles and virtues of our Pilgrim Fathers. Among those gentlemen we find you distinguished, and request the honor of your company at dinner on the day mentioned at six o'clock P. M., at the City Hotel.

Very respectfully your obedient servants.

TOASTS OF THE NEW ENGLAND SOCIETY IN THE CITY OF NEW YORK,  
AT THEIR ANNIVERSARY CELEBRATION DEC. 22, 1834.

### 1. *The day we celebrate.*

It will be remembered as long as piety and principle command the homage of mankind.

### 2. *The memory of our Pilgrim Fathers.*



3. *The hospitality of Holland to our exiled ancestors.*

The oppressed were not disappointed in seeking protection from a nation, who exhibited a noble daring and persevering zeal in the cause of liberty.

4. *The clergy of New England.*

Our forefathers dedicated their purest hearts and soundest heads to the service of their Creator.

5. *The common schools of New England.*

A brilliant constellation, which has illuminated this western world.

6. *The United States.*

Too happily united, *seriously* to wish a divorcee.

7. *Plymouth Rock.*

The house built on it will not fall.

8. *New England and our country.*

“There is a land, of every land the pride,  
 Beloved by Heaven, o'er all the world beside,  
 \* \* \* \* \*  
 There is a spot of earth supremely blest,  
 A dearer, sweeter spot than all the rest,  
 \* \* \* \* \*  
 That land our country, and that spot our home.”

9. *The State of New York.*

New England owes her a debt of gratitude for the rich rewards which her fertile fields and spacious harbors have bestowed on the enterprise of her sons.

10. *The Mayflower.*

She was directed through the deep by firm resolve and high enterprise, and brought *life and light* to this benighted land.

11. *The literary institutions of New England.*

Their number and prosperity are a source of just pride to all who claim her as their native land.

12. *The sons of New England.*

They have received a rich inheritance, and deep will be their disgrace if they do not transmit it unimpaired to posterity.

13. *The daughters of New England.*

Their virtues have richly earned the high character which they sustain.



MONTPELIER, *Dec. 20, 1834.*

I have received, fellow-citizens, your letter, inviting me, in behalf of the New England Society in New York, to a dinner on the 22d instant—their anniversary celebration of the principles and virtues of their Pilgrim Fathers. The obstacles to my acceptance of the invitation being insuperable, I can only express my acknowledgments for the kindness and politeness which dictated it.

The exalted feelings which determined the Pilgrims to seek in a new world, through the perils and sufferings to be encountered, the liberty, religious and civil, denied them in the old, and the fruits of their heroic virtues, in the multiplied blessings now enjoyed by their expanding posterity, cannot fail to inspire admiration and gratitude.

With an assurance of my cordial sympathy in these sentiments, I tender that of the great respect and good wishes, which I pray may also be accepted.

JAMES MADISON.

SAMUEL A. FOOT and others,  
Committee of Arrangements.

WASHINGTON, *Dec. 17, 1834.*

GENTLEMEN:—I am honored with your letter of the 8th inst., conveying to me, in terms entitled to my grateful acknowledgments, the invitation of the New England Society in the city of New York, to attend the celebration of their anniversary on the 22d instant. I regret that my engagements here deprive me of the pleasure of meeting the Sons of the Pilgrims at New York on that memorable day. Believing as I do that the principles of those our forefathers were the germ of all that is liberal in our institutions, and all that is virtuous in our morals, I cannot forbear the expression of my gratification upon finding that their descendants in the most populous of our cities, in the annual commemoration of the landing on Plymouth Rock, manifest, in the most appropriate manner, their own adherence to the spirit, which, upon that rock and a surrounding wilderness, at the winter solstice of 1620, laid the foundations of the greatest Republican empire ever encircled by the sun. Such may your children find it—such, by the preservation of the pilgrim spirit, they cannot fail to make it—your example will train them up in the way they should go, and they shall not depart from it.

I am, with great respect, gentlemen, your fellow-citizen and servant,

J. Q. ADAMS.

Messrs. SAMUEL A. FOOT, and others, Committee of  
Arrangements of the New England Society in the City of New York.

BOSTON, *Dec. 13, 1834.*

GENTLEMEN: I have received with great pleasure your kind invitation, in behalf of the New England Society in the city of New York, to unite with them in celebrating the landing of the Pilgrims at Plymouth in 1620,

on the approaching anniversary of that event, and I deeply regret that my official engagements must prevent me from participating in the gratification which it promises. As a native of the old colony and an American citizen, I duly appreciate that deep and ardent emotion of filial and patriotic attachment which leads you to regard that event and its associations as full of intense and varied interest.

In the recollections connected with that period, it has always struck me as one of the most remarkable and characteristic events of the time, the deliberate formation and adoption of a social compact and form of civil government, under a solemn and mutual engagement, in which, though in the rudest and humblest form, are contained the great fundamental principles of civil liberty, attempted to be secured by express constitutional provisions. It recognizes the will and consent of the community as the source of political power, the entire equality of civil and social rights among its members, the value and necessity of civil government, the duty of subjection and obedience to the laws and "*the general good*," as the ultimate object of all government. Here is the germ of that prodigious growth of free constitutions which, in various forms, is rapidly spreading over the western hemisphere. How vast, apparently, was the disproportion between the humble act of these simple-hearted, but resolute, determined, and religious men, and the consequences of that act! In the cabin of the Mayflower, lying in a lonely harbor on the desolate shore of Cape Cod, they adopted a measure which was to stamp the political character for ages of that great continent on which they had not yet landed.

In allusion to this subject, permit me to offer a sentiment, should a suitable moment occur, in which nothing better adapted to the patriotic and convivial feelings of the occasion presents.

The cabin of the Mayflower, the Convention Hall of the Pilgrims; hence emanated the first ray from that sun of constitutional liberty, which, we trust, is destined to warm and illuminate every mountain and valley of the western continent.

With my best wishes for the prosperity of the New England Society of the city of New York, and cordially participating in the feelings by which its members are animated,

I am, gentlemen, truly and respectfully, your friend and ob't servant,

LEMUEL SHAW.

Messrs. SAMUEL A. FOOT and others, Committee, &c.

WASHINGTON, Dec. 16, 1834.

GENTLEMEN: Your letter of the 8th, requesting me to be present at the anniversary of the New England Society of the city of New York, is now before me, and, as a descendant of the Pilgrims, it would give me the greatest pleasure to accept the invitation. Indeed, few things would afford me higher gratification than to unite on this occasion with the Sons, in doing honor to the Fathers, of New England. My numerous engagements, however, make it necessary for me to decline this pleasure, which I do with

the more regret from my personal acquaintance with many members of your association.

Be pleased, gentlemen, to accept my acknowledgments for your kind invitation, and the assurance of my great respect for yourselves, and for the society which you represent.

Your obedient servant,

DANIEL WEBSTER.

To Messrs. SAMUEL A. FOOT and others, Committee of  
Arrangements of the New England Society of New York.

(Mr. WEBSTER'S toast enclosed.)

The descendants of the Pilgrims of New England: However widely or thickly they may hereafter spread over the continent, may they yet ever feel, in all its force, that sentiment which caused the emigration of their fathers—"Liberty without a country, is better than a country without liberty."

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No. XIX.—VOL. 1, p. 153.

*Colonization Society.*

ADDRESS.

The Colonization Society of the City of New York consider it their duty at this time, to present to the public the views of the society on the subject of the present condition and prospects of the American Colonization Society, and of the practicability of further efforts in favor of the cause of colonization.

Apprehending that the annual meeting of the parent society, which was held at Washington in January last, would be an important one, and require the attendance and attention of the best friends of the cause, this society appointed five delegates to attend the meeting, not only to aid in whatever investigations it might be necessary to make into past transactions, and assist in adopting measures for conducting future operations, but also to give, on their return, full and accurate information to this society of the condition and prospects of the parent board. The delegates whom this society appointed were the Rev. Gardiner Spring, D.D., the Hon. Cornelius W. Lawrence, the Hon. James Strong, Silas Brown, Esq., and the agent of this society, Robert S. Finley, Esq.

Messrs. Spring, Brown, and Finley having returned, this society has received an authentic account of the annual meeting of the parent society, and of the developments made and measures taken for the future at that meeting, and will now proceed to present them to their fellow-citizens.

It is already known to the public that the friends of colonization were deeply afflicted at the disclosures which were made at Washington of the inefficiency of the former management of the American Colonization Society, and of the heavy debt which had been incautiously, and, it is feared, in respect to a large portion of it, unnecessarily contracted by that society.

This society, however, are willing to find an apology for this unhappy occurrence in the wide extent of the duties of the officers and managers of the parent society, and in the peculiar and untried character of those duties. And when we revert to the history of the planting of colonies in this country, and reflect how many lives and fortunes were lost, and how many actual failures occurred, we have reason to rejoice, and thank the Ruler of all things, that in the new and arduous duty of planting a colony on the coast of Africa, the only mistake which has been made is the inconsiderate contracting of a somewhat heavy debt.

This occurrence, and the consequent embarrassment of the affairs of the American Colonization Society, may be traced, *primarily*, to the defectiveness of its original organization, which was made when the extent and nature of its duties were not, and could not, be known.

The number of managers was unnecessarily large, being forty-five, including the vice-presidents, who, by the old constitution, were *ex-officio* members of the board. Not more than six or seven of the members usually attended the meetings of the board to transact the business of the society. And at one time *one set* of managers transacted the business, and at another time *another set*. Hence, there was a want of uniformity and consistency in their operations.

Owing in part to the same cause, and in part to the manner in which they were elected, the members of the board felt that they were under no direct responsibility to those who contributed principally to the funds of the society. They were elected, not by delegates from the auxiliary societies, but by members of the

parent society: and every person was a member who contributed one dollar annually to its funds.

In consequence of these regulations the friends of the cause, at a distance from Washington, neither took any part in the election of managers, nor inspected their proceedings after they were elected.

The elections, generally, were informally held at the annual meetings, and usually resulted in continuing from year to year the same managers. The public never called for nor received the result of an investigation into their proceedings; and they consequently felt but little, if any, accountability.

To substantially the same cause, viz., the defective organization of the board, and the consequent looseness in their mode of conducting business, may be traced the want of responsibility *to the board, of their agents, especially those who resided in Africa.*

In addition to the causes of inefficient action already presented, it should also be stated that the treasurer of the parent society was not a salaried officer, and of course could not be expected to bestow the time, attention, and financial skill which the fiscal concerns of the large and extensive operations which the society were conducting imperiously required. He appears to have considered, and doubtless correctly, his duty performed when he received and carefully kept all the money paid to him, and honestly disbursed it in pursuance of the orders of the board.

When the operations of the society, both in this country and Africa, were on a limited scale, and the cause was blessed with agents in Africa peculiarly qualified for their stations, its affairs were prosperous, and the imperfections of its organization did not disclose themselves. But when the business of the society became extensive and intricate, and the immediate administration of the colony passed into feebler hands, the state of things began to manifest itself which was fully developed at the late annual meeting.

It appeared that the *excess of demands upon* and over the income of the society, for the last year, amounted to *forty-one thousand dollars*, and the society was in arrears to that extent at the close of the year. This was an unexpected and discouraging disclosure. But a little reflection, and an examination and

statement of the resources of the American Colonization Society, will convince its friends that there is no reason for being disheartened. The *mere amount* of this sum, which is now a debt on the society, sinks in importance when we compare it with the means which the society possesses for discharging it, and prosecuting hereafter its sacred enterprise.

The following items of its resources will show that they are ample, not only for the prompt discharge of the debt, but for the continuance of its future operations without material embarrassment:

A legacy due from the estate of the late Mr. Ireland, New Orleans.....	\$10,000
Do. from the estate of Mr. Burr, of Vermont, \$5,000, which, with interest from 1828, is estimated at....	6,000
Do. of the late Dr. Aylet Hawes, of Virginia.....	2,000
Do. of the late Mrs. Muldrow, of Kentucky.....	500
Money in the Treasury of the Kentucky Colonization Society.....	1,500
Money raised by the friends of colonization in Albany, to send out temperance emigrants.....	1,500
Moneys in the treasuries of the auxiliary societies, esti- mated at.....	1,000
Subscription at the late annual meeting.....	10,000
Do. since that time.....	2,000
Annual income from imposts on goods imported into the colony.....	5,000
Annual and average income from donations in this country.....	40,000
Donations expected from England, say.....	2,500
	<hr/> \$82,000

It is not then the *amount* of the debt so much as the *manner* in which it was contracted that fills the friends of the cause with regret. This society feels bound in candor to state to the public that there has been an extravagant and heedless expenditure of money in the colony, and that the injudicious administration of and the unfortunate management in the colony, are mainly to be attributed to the want of attention and efficient supervision at home,



and of establishing and enforcing a rigid accountability on the part of disbursing colonial agents. An excuse for this, however, will be found by the friends of the cause, in the increased magnitude and difficulty of the undertaking, and in the entire inadequacy of the first organization of the society for its subsequent extended operations.

Having thus briefly, and in general terms, stated the causes of the misfortune the friends of colonization have encountered, we take pleasure in assuring the public that decisive, and, we hesitate not to say, effectual measures have been adopted to prevent any similar occurrence.

The friends of the cause who attended the late annual meeting of the parent society, were enabled, with a most gratifying unanimity, and with the hearty concurrence of the former managers, to effect a reorganization and establish regulations, which will not only remove the causes of the present embarrassment, but place an effectual safeguard against their recurrence.

The number of the members of the board of managers has been reduced and its efficiency increased by introducing several new members of distinguished philanthropy, business talents and habits, and financial skill, and by the appointment of an additional secretary and a salaried treasurer, both of whom are believed to possess superior qualifications for their stations.

A new colonial governor, eminently qualified for the office, has been elected.

The accountability of the board to the public has been secured by giving their election to the *delegates from the auxiliary societies, and the life members of the society*, and requiring a full statement to the annual meeting of all their operations and proceedings. The reorganization and new regulations will also ensure a rigid accountability to the board of their officers and agents in Africa as well as in this country.

A new and important principle of action is also about to be adopted for the future operations of the society. The parent board will probably hereafter wholly abstain from the superintendence in detail of transporting emigrants to the colony, and leave to such of the auxiliary and local societies as choose to undertake it the labor and expense of collecting emigrants, send-

ing them to Africa, and providing for them on their arrival, and until they can sustain themselves.

It appears to be generally expected that the parent society will confine itself to, and find sufficient employment in, governing and defending the colony, enlarging its territory, fostering its civil, religious, and literary institutions, and placing them on a broad and permanent basis. It will, however, and no doubt ought to, retain and exercise the power of controlling and regulating the auxiliary and local societies in their mode of conducting emigration. It should certainly prevent them from sending improper emigrants, or in too great numbers, or at improper times, or without necessary provision for their comfort and health during the voyage, and for their prosperity and happiness after their arrival in Liberia.

The parent society will, however, judge for itself in marking the lines of its future duties, and in that respect be regulated by wise and enlightened counsels. But by dividing, in the manner suggested, the labor and responsibility, and securing the active co-operation of a greater number of devoted friends in different parts of the country, and at the same time acknowledging and yielding to the control and direction of a wise and efficient central head to check all extravagant or irregular action, the business of colonization hereafter, we trust, will be conducted with greater care, regularity, and economy.

In conformity with this principle of action, the Colonization Society of the city of New York will hereafter itself expend in colonization, the money which shall be raised under its immediate auspices. To enable this society to do that, the parent society has given us permission to establish a new settlement, to be called *New York*, at some suitable location in Liberia, and to direct all our energies and expend all our resources upon that object.

In prosecuting it, we shall not endeavor to see how many free persons of color we can by our own efforts send to Africa, nor how many slaves we can emancipate. But our great aim will be to promote, by all the means in our power, the true interests of those who may emigrate to our settlement, and the true interests of the pagan population among whom they settle.

To this end our colony will be founded on the following principles:

1st, The selection of such emigrants only as are members of the Temperance Society, and of unexceptionable moral character.

2d, The settlement of them under such circumstances as will promote agriculture, especially the cultivation of the staples of the African soil, such as rice, cotton, sugar, and coffee.

3d, The adoption of a system of universal education, and to provide at once the means of instruction in letters and the useful arts of life, not only for the colonists, but also for the native African who may live in the settlement and its vicinity.

4th, The entire prohibition of the use of, and traffic in, ardent spirits, except for medicinal purposes.

In view of the facts and objects above presented, the Colonization Society of the city of New York have adopted the necessary measures to secure an efficient board of managers, and responsible and active officers and agents to conduct its future business and operations. The society has resolved to establish a colony, and has already an exploring agent employed in Africa to examine Cape Mount—the site of the contemplated colony—and if it shall be found an eligible position, to make the necessary arrangements for the reception of the pioneer emigrants. If the society should be disappointed in the eligibility of this site, another one will be sought, and the like arrangements made. The society, therefore, earnestly and respectfully invite the co-operation and support of their fellow-citizens in executing this interesting and benevolent enterprise. They pledge themselves that all money and property contributed to this object shall be faithfully and economically applied.

WILLIAM A. DUER, *President.*

IRA B. UNDERHILL, *Recording Secretary.*

NEW YORK, *February 17, 1834.*

No. XX.—VOL. 1, p. 156.

*Board of Education.*

*Introduction.*

1st. *First effort.*—Always an honor, and when there is an assurance of the requisite qualifications it must be a source of high joy, to speak in our Master's cause. Although conscious of the honor, yet cannot feel the joy. I hope all who hear me will make and keep a broad distinction between the cause sought to be advocated and the advocate, that his views and thoughts, which must be crude, may not tarnish the bright glories of our Redeemer's kingdom, nor impede its progress; and my hearers will also please to remember, that those who stand as watchmen on the tower of our Zion and represent her on earth, must not be held responsible for my imperfect thoughts.

2d. Accompanying the request to make this address was the pamphlet Education Papers, No. 2. It contains a full exposition of the reasons for sustaining the Board, but omits one which has and will, till better informed, influence me in sustaining it, and that is, the necessity and importance of a thoroughly educated ministry to preserve union and peace in the church.

*Resolved,* That a well educated ministry is one of the most efficient instruments of our Heavenly Father to establish and sustain an united and peaceful church on earth.

3d. The greatest obstacle to the advancement of pure religion, and especially to the progress of the Presbyterian church, is the errors and consequent dissensions which prevail in it. This not only deters those without from approaching and entering, but absorbs the time, talents, and learning of the church, and diverts them from their great, glorious, and true work of spreading the gospel, to the correction of errors which spring from human devices and the subduing dissentious contests which they engender. History shows a melancholy amount of time, talent, and learning wasted, but necessarily so, in exposing and correcting errors in the church, which would have effected wonders if directed to the true object.

Besides the strongest invitation to those without, is the exclamation of the Psalmist.

Does a thorough education of the ministry tend to correct these evils? Yes.

The principal origin of existing errors shows that it would.

1st. There is a general harmony in the revelations of God as embodied in the scriptures of the Old and New Testament.

But finite minds cannot take in at one view the fullness of the revelations of God, salvation, his counsels and will, as it is almost seeing him face to face. They are then given to us singly and in detail by precept, admonition, expostulation, parable, biographies, invitation; we can comprehend each part by itself, and compare it with the other parts.

But to assign to each part its relative importance and view it in harmony with the whole, requires a thorough Biblical education, and the history of our errors will show that very many of them are attributable to a want of this kind of education. Fullness of knowledge would bring union of sentiment—schisms arise from ignorance, union follows thorough and profound knowledge.

2d. There are very few new errors; those which now prevail, so far as I can understand them, are old and exploded ones, which have had their day, been successfully combated and forgotten, except as a matter of history, for centuries, but are now revived, the terms applicable to them and the modes of expressing them being altered, and they defined anew in the language of the present day, to which our ears are accustomed. When, however, they are stripped of their modern garb and touched by the spear of Ithureal, their deformity appears.

Invidious to name particular errors; but general history of religious controversies show this observation to be correct.

Give that general history, including rise, progress, and termination. This history shows us that errors come from uninformed or inactive minds, and that the husbandmen are rallied to subdue the weeds within the harvest-field, instead of repelling foes from without.

No surer antidote than a thorough education in the doctrinal history of the church; for

1st. It prevents the starting of errors.

2d. It enables others to detect them, which prevents the error-

ist from obtaining followers, and bring his false doctrines at once to the test of truth.

How few of our controversies are conducted with the true spirit of a search after truth.

Education disciplines the mind, and enables it to investigate truth soberly, and flee from a contentious spirit.

Be always ready, &c., with meekness and fear.

True and thorough learning renders us diffident and distrustful of our opinions. Knowledge is but an enlightened discovery of our ignorance.

A French writer remarks that "the modest deportment of those who are truly wise, when contrasted with the assuming air of the young and ignorant, may be compared to the different appearance of wheat, which, while its ear is empty holds up its head proudly, but as soon as it is filled with grain, bends modestly down, and withdraws from observation."

*Conclusion*, that a well educated ministry gives union and peace to the church.

This in itself is invaluable. "Behold how good and how pleasant it is for brethren," &c. But in reference to the world, truly without price.

PHILADELPHIA EDUCATION ROOMS, June 2, 1834.

MY DEAR SIR :

I have been deeply disappointed at your decision *not to give us your speech*, and must beg leave to carry the case before the *Court of Errors*.

I think that speech very important just now. It was modest and sensible, and appropriate. Not a word was said that any man could condemn, and yet you placed the origin of disputes, &c., in a new and excellent light. I am sure no minister of Christ will complain of it, unless he is just the man it fits. I wish it, however, for our *students*. Do not refuse me, I pray you ; but reconsider your decision and send it on to me.

Excuse my freedom, indulge my wishes, and believe me, very truly yours,

JOHN BRECKINRIDGE, Corr. Sec.



No. XXI.—VOL. I, p. 156.

*Circulation of the Bible.*

MR. FOOT'S ADDRESS.

In offering the *third* resolution, Mr. Foot remarked that the attention of this Society had been principally directed during the past year, and probably would be for the future, to the great and commanding enterprise of supplying the world with Bibles. This supply, however, must come from home, from our own country, and that theatre of effort must not be neglected. When the streams which irrigate our farms become sluggish, or their waters become turbid, or when we wish to increase their quantity, or the force and action of their currents, we turn our attention to the fountains, and clear and enlarge them. So if we would send the gospel in its refreshing currents over the world, we must enlarge and improve the fountain at home.

The first subject to which our attention is called by the resolution is, "the work of re-supplying with the Scriptures the destitute families in our older states." This is so obviously our duty that no observations are necessary to enforce it.

The next is "keeping up a supply in our new settlements."

The first thought which presents itself to the mind upon this branch of the subject, is the salvation of the immortal souls of those who leave the paternal roof and their native states to seek a residence and a home in our Western wilds; and the next thought is one which addresses itself with peculiar force to us as Christian patriots. Let us dwell upon it for a moment.

Our destiny as a nation must, in a few years, depend on our Western states. The immense population which will soon cover them will possess a controlling influence, either for good or evil. Our union, around which as a centre all our national blessings and hopes revolve, and the destruction of which would lay our political system in ruins, will lie at the mercy of our Western brethren. The influence of the Bible in cementing that union is beyond all measure and all price—it raises but one standard—it admits of no opposing oaths of fidelity, nor of any divided allegiance—the services which it demands are all to one Lord and

Master—all his servants are brethren—one common cord of sympathy binds them all. The anniversaries of the present week have brought together fellow-citizens from Maine to Louisiana. How do they meet? As cordial friends. One heart beats for them all; one pulsation animates them all. The Bible, expounded and enforced by a pious, devoted, and enlightened ministry, is the true and strongest bond of our national union. But this subject is so full of rich associations and delightful anticipations, that an occasion like this only permits an allusion to it, showing us the treasures we must pass; and I will dismiss it with only a single further remark. No finite mind can measure the width, the depth, or the length of the current of influence which a single Bible will produce, placed at the beginning of the line of countless millions of beings who now lie in the creative power of God, but who shall rise and disappear, and rise and disappear, on our wide and fertile plains of the West, till time shall have an end.

The next subject to which the resolution directs our attention is furnishing Bibles to seamen and boatmen.

No enterprise more distinctly marks the characteristics of the present era, and displays the power of Christian effort, than the improvement which has been effected within the last ten years in the moral condition of seamen. They were regarded before, as almost outcasts from society, vagrants, attached to no place and connected with no home; and even now in the country of our ancestors, which we revere and delight to honor, that country of law, science, and religion, the sailor is deemed an outlaw, and may be forcibly seized, dragged from his kindred and home, and compelled, against his will, to enter the public service. The benignant spirit of the gospel has at last, however, encompassed them in her arms, and is raising them from their degraded condition, and directing their hopes to heaven. This Society is giving them the Bible—a compass, not to point them to the pole-star by which they may direct their vessel upon the deep, but to the haven of rest, that wherever they may wander,

“In every clime the magnet of their souls  
May tremble to that pole.”

The resolution next calls our attention “to the army and navy,” to hospitals and prisons.

It seems a paradox that the soothing influences of the Bible should best qualify the soldier for his duty, which possibly is slaughter and death. But so it is. The soldier who is covered with the Christian armor is the best defender of his country in peace or war; and the best army and navy regulations which were ever issued, are the Scriptures of the Old and New Testament.

The Bible is peculiarly an appropriate gift to the tenant of a hospital. The physician visits him to heal his bodily sickness, but there is "a balm in Gilead" which will heal all his wounds.

We all know who said, "I was in prison, and ye came unto me," and the interrogative answer, "When saw we thee sick, or in prison, and came unto thee?" And the sweet reply, "Verily I say unto you, inasmuch as ye have done it unto one of the least of these, my brethren, ye have done it unto me." Do we need greater encouragement, or a higher motive to give the Bible to the prisoner—the warrant which shall break his chains and make him free indeed?

The last topic to which the resolution directs our attention is, supplying the Bible "to the numerous emigrants which are continually landing on our shores."

To these we owe the high and sacred offices of hospitality, and can fulfil them no better, than by giving them the treasures which the Bible contains. They come to us for the enjoyment of freedom. Let us give it to them, not in the form of a license to indulge unbridled passions, or follow the promptings of an unsubdued spirit, but in the form of regulated and holy communion with God, where they shall meet with no restraints, except in the revelations of his will, nor with any limits except the borders of heaven, nor with any end, for it is boundless as eternity. They come, too, for an asylum to protect them against oppression. Let us give them an asylum, the gate of which is defended by an Almighty arm, and where at last they shall find eternal rest. And they come, too, for the security afforded by a government of laws. We will not disappoint them; we will extend to them the benefits of our Constitution and laws, and protect their persons and property. But let us also give them a constitution formed in heaven, and a body of laws, whose seat is literally "the bosom of God," and whose voice is, in reality, "the harmony of the world."

Mr. Foot hoped and expected the resolution would receive a ready and hearty response from the audience.

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No. XXII.—VOL. 1, p. 170.

*Objects of Pursuit of a True Lawyer.*

*An Address delivered 25th of November, 1835, before the Members of "The Law Association of the City of New York;" introductory to a course of lectures to be delivered before that Association.*

YOUNG GENTLEMEN:—In complying with your request "to deliver the Introductory Address" to the course of lectures which are to be delivered before your Association during the approaching winter, I have selected a subject for your consideration which is not usually discussed in a course of lectures upon law, and which probably does not legitimately fall within the scope of such exercises. It is a topic, however, which ought to be fully understood and maturely considered by every young gentleman who is preparing himself for the profession, and kept constantly in view by those who have already entered it. That subject is *the motives which should induce young gentlemen to select the law as a profession, and actuate all engaged in its practice.*

Superficial observers, and those who look at the law from a distance, are too apt to limit their views and reflections upon it to the aspect which it assumes in the course of administration, and when applied to the regulation of the business and duties of life, and they form their estimate of its character and value accordingly; while those only who cultivate the law as a science, examine its origin and foundation, and trace out its moral influences, can appreciate the elevation which it occupies, and the benefits which it confers on mankind.

The law is *seen, felt*, and spoken of daily by all; and yet, is less understood, and the opinions formed of it, and the profession of it, are more erroneous than of any other calling or profession.

The reasons are obvious. This is a government of laws. All sovereign power shows itself in the form of legal enactments.

The great body of the people are not only the subjects, but the makers of the laws.

In both characters their minds are constantly directed towards them.

They watch all abridgments of their natural rights with great jealousy, and, of course, *all agents* in the enforcement of such abridgments; and the odium, if any, which the law excites naturally falls on the profession in the minds of the unenlightened and illiberal.

They do not extend their views beyond the direct effect on themselves. Another cause of severe judgment is the delinquencies of the profession. The members of our profession must, therefore, expect to be the subject of this watchful jealousy, and this consideration should hold a prominent place in determining the motives for entering the profession.

There is another equally true but brighter view of the subject arising from nearly the same causes.

As I have said, ours is a government of laws. We look to them for the protection of life, liberty, and property. This awakens attachment and respect, commands confidence, and if occasion calls for the protection of the laws in favor of an individual, and it is efficiently yielded, deep gratitude is felt. The agents of the law become in part the objects of these elevating and delightful sentiments, and reap the rich reward of their possession.

With this jealousy on the one side to chastise for delinquency, and on the other the rich reward of the approving judgment of our fellow-men to stimulate to effort, it is obvious, that a *principal and controlling motive* to enter the profession should be *a desire to benefit the community of which we are members*.

A lower or more limited motive than this will produce an ignoble professional career, which will terminate either in obscurity or positive disgrace.

Public sentiment neither will, nor should, tolerate the practice of our profession for purely selfish purposes.

Illustrate the rule by which we should be guided, and draw the true distinction between extravagant pretension to disinter-



estedness on the one hand, and unalloyed selfishness on the other.

We are neither to be martyrs to the public good, nor devoted and unceasing idolators at the shrine of wealth or fame.

Give examples from the lowest, middle, and highest walks of the profession, viz., the collection of a note, the partition of an estate, the conducting of a controversy.

We need not and should not be indifferent to the pecuniary rewards of the profession. Show the true limit and the degree of influence which they should have.

Denounce the practice of using the profession for the base purpose of accumulating wealth right or wrong.

The pursuit of fame and public station are often the leading motives for entering and pursuing the profession. Show the true limit of this inducement and the degree of influence which it ought to have on the conduct of a professional man. Illustrate it by example.

Thus it appears, that let us pursue what channel of inquiry we may, we arrive at the same conclusion, that the main object of a lawyer must be the interests of his clients, and through them of the community.

Show how by pursuing those interests properly, the best interests of the public are promoted.

*Another motive* for entering the profession should be a love of justice, and an unceasing desire to promote it among men.

Show what is justice, and the effect upon the human heart and character of cultivating it.

The last and most impressive motive should be a desire to become acquainted with those systems of rules which have been established for the government of moral beings, the first principles and foundations of which were laid by infinite wisdom.

No. XXIII.—VOL. 1, p. 193.

*Corporations and Constitution.*

*An Argument in favor of the Constitutionality of the General Banking Law of this State, delivered before the Supreme Court, at the July Term, 1839.*

ADVERTISEMENT.

The history of judicial controversy, so far as my knowledge of it extends, does not furnish a case in which such an immense amount of property and such vital interests of the community were involved, as were brought into discussion and subjected to judicial determination by the argument of the cause of Anson Thomas, president of the Bank of Central New York, against Samuel D. Dakin, at the last July term of the Supreme Court of this state, held at the city of Utica. The question raised, discussed, and submitted to the court in that cause was, whether the Act of our Legislature, entitled, "An Act to authorize the business of banking," passed the 18th April, 1838, and commonly called the "General Banking Law," was constitutional or not. If it is not constitutional, it is of course void, and gives the banking companies formed under it no legal authority to conduct banking business. Every one will readily see the immeasurable amount of unmixed evil which must flow from such a result. The contemplation of it even is appalling. It became my duty to take a responsible part in this grave discussion.

The tens of millions which have already been invested under this statute, and now actively employed, and the arrangements which have been made for the investment of hundreds of millions, give the subject an unparalleled importance as regards mere amount of property. The peculiar moment, too, at which the question arises is most inauspicious for the business and commerce of the country, and the public credit of the states of our Union. The determination of the question will, moreover, have a material influence on the future legislation of this state, so far as relates to private incorporations; and, it is hoped, may have a

beneficial effect upon it, and check, if not entirely cure, many serious evils we now endure.

These various aspects of the subject have created great anxiety in the public mind, as I learn, to be informed of the grounds taken in the argument, the precise questions raised and discussed, and the views taken and suggestions made by the court.

The passing of the present month at this place gives me an opportunity, and I have concluded to write out and publish my argument, in the hope that its publication may be of some benefit, at least, in allaying the anxiety felt to be informed of what occurred on the discussion, and perhaps in exhibiting the firm grounds on which the rights of those rest who have invested their property on the faith of a public statute of our state.

SAMUEL A. FOOT.

GENEVA, *August 1, 1839.*

#### HEADS OF THE ARGUMENT.

STATEMENT of the case—and how the question arises respecting the constitutionality of the General Banking Law.

Preliminary remarks.

Propositions maintained in the argument.

*First*, The associations authorized by the statute, and organized under it, are not *corporations*; and, consequently, the clause in the constitution of this state, which restricts the power of the Legislature in creating bodies corporate, does not apply to it.

*Second*, But admitting that the *associations* are *corporations*, still, this statute is constitutional, because the restrictive clause of the constitution does not prohibit the Legislature from passing a law authorizing an indefinite and unlimited number of corporations; or, in other words, does not apply to a general act of incorporation; and, consequently, the Legislature may now provide, by a general law, for the incorporation of an unlimited number of voluntary associations, as it could, and did, in many instances, before the adoption of the present constitution.

*Third*, Admitting that the constitutional restriction does apply to a general act of incorporation, nevertheless, such an act may be passed by a two-thirds vote; and the statute in question, having passed through the regular forms of authentication, and appearing on the statute book, must be presumed to have been passed by the requisite constitutional vote.

## Supreme Court.

ANSON THOMAS, President of the Bank of Central New York, <i>vs.</i> SAMUEL D. DAKIN.*	}
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This is an action of assumpsit, commenced by declaration in the usual form, upon three drafts, amounting together to about five thousand dollars, drawn by Dakin, the defendant, in the months of February and March last, and of which the Bank of Central New York became the owner and holder by regular indorsement, and which, being dishonored, were regularly protested for non-payment. The defendant having neglected to pay them, this suit was instituted by the plaintiff, the president of that bank, to enforce their collection, and a demurrer to the declaration has been interposed. On this state of the pleadings a question is raised respecting the constitutionality of the statute, entitled "An Act to authorize the business of banking," passed April 18, 1838, and usually called the "General Banking Law," and under which the association of which the plaintiff is president, was organized as a banking company.

The defendant's counsel contends that the statute is unconstitutional, because the associations which it authorizes, and which are or may be organized under it, are *corporations*; and as

\*This cause was argued at Utica, before the Supreme Court, on the 22d, 23d, and 24th days of July, 1839, by Ward Hunt, Esq., for the defendant, and by C. P. Kirkland, Esq., and the writer of these pages, for the plaintiff. Mr. Hunt made a full and strong argument. Having evidently studied the cause thoroughly, he presented his propositions and sustained them with propriety, clearness, and force.

Mr. Kirkland opened the argument for the plaintiff in a speech of upwards of three hours in length; and during the whole of its delivery he had the undivided attention of the court and audience. He appeared to realize the very great importance of the question under discussion, and fully met it. His reasoning was forcible and conclusive, and his manner, as usual, remarkably appropriate.

I hope I may be indulged the remark, that the bar of this state is in no great danger of declining in usefulness or public estimation while gentlemen like Mr. Kirkland are rising into its first ranks.

the statute provides for the creation of an indefinite number of them, it is in violation of the *ninth section* of the *seventh article* of the constitution of this state, which is in these words: "The assent of two-thirds of the members elected to each branch of the Legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes, or creating, continuing, altering, or renewing any body politic or corporate."

*Preliminary Remarks.*—It is a source of deep regret that the defendant, either to delay or defeat the collection of what appears to be a just demand, should, at this inauspicious moment, in the progress of our country, its commerce and business, attempt to raise a doubt of the validity of a law which, thus far, has produced a most benign and beneficial influence and effect upon our embarrassed affairs and depressed community. Numerous banking institutions have been established under it, which are now in successful operation; and especially in our commercial metropolis, several have been organized with large and increasing capitals, furnished by domestic and foreign capitalists, relying on the faith and soundness of our institutions and laws, which are now in full and successful operation, conducted by citizens distinguished for their patriotism, moral worth, and financial experience and talents. These institutions are already identified with the business of the city in which they are located; have extensive connections with the monetary affairs of our state and country; are daily engaged in large financial transactions with the different states of our Union, and with foreign houses of wealth and credit, with whom they have already formed large and substantial arrangements highly beneficial to our struggling commerce, which is now seeking new foreign associations to supply the place of those destroyed by our late commercial misfortunes.

Should the defendant succeed in his defence, or even raise a serious doubt of the constitutionality of our General Banking Law, those beyond the reach and direct influence of the activity and excitement of our commercial emporium, engaged in their libraries, or taking refreshing walks in their quiet villages or fields,\* can scarcely realize the extent or depth of the injury and

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\* All the justices of our Supreme Court reside in villages in the country, and the chief justice cultivates a farm.

distress produced by destroying or paralyzing financial agencies so powerful and active as the banks established in the city of New York under this statute.

The bare agitation of this question must, to some extent, impair confidence, but a real doubt will fly even swifter than the wind across the Atlantic, defeat arrangements to draw foreign capital to the aid and relief of our laboring and almost exhausted country; will prolong and increase the feverish excitement in which our monetary affairs are involved; still farther diminish and obstruct the energies of our slowly and fitfully recovering commerce and business.

If the defence prevails, a deep and almost irreparable wound will be inflicted upon our own citizens. All the banks created by our General Law will fall directly within the highly penal provisions of the Restraining Act, and all the securities held by them will, consequently, be void; and especially the bonds and mortgages taken and transferred to the comptroller, and forming the basis and security of the most convenient and safe currency ever devised. The bills will fall valueless on a confiding and innocent community, and those least able to bear will sustain the greatest losses. Humble but bright hopes will be blighted; fair prospects of reasonable gains, and just rewards of virtuous industry destroyed. The associations will be compelled to wind up their affairs, prosecutions will multiply, and litigations flood our courts. The morals of our citizens will become corrupted by holding out to them strong temptations to dishonesty. Every debtor to the associations organized under the law, who is unable or unwilling to pay his debt, will be invited, by the strong motive of interest, to delay, if not defeat his creditor. The unprincipled will take advantage of the misfortune to increase his gains by plundering the meritorious. Confidence will be lost in the security which our laws profess to give. Mistrust will take the place of confidence, violence that of peace, and we shall be carried rapidly, by this torrent of dishonesty and crime, far towards anarchy and ruin. Facilities for business will also be materially curtailed. Those who survive the shock will be discouraged. Enterprise and active talent will leave the state, and seek a more secure and auspicious theatre of effort.

Safety or security from our laws can no longer be hoped for



or promised. This act was passed on the recommendation of our late Chief Magistrate, and in all its features is in exact accordance with his recommendation. It was passed by a Senate consisting of a large majority of his political friends, and by an Assembly containing a like majority of his political opponents. The bill underwent a full discussion in each House, was passed by a large majority in each, and received the cheerful approbation of the Governor. It was given to the community under the highest sanctions that our institutions and public opinion could bestow. It commanded and received the wary confidence of the wealthy capitalist, as well as the freer faith of the enterprising man of business. It has gone to Europe with the recommendations of all; is highly approved by her most distinguished financial talent; has and is drawing millions of foreign capital to our shores; and if it should now be prostrated, not only would the measure bring, in foreign judgment, great discredit on our institutions, and thus check the progress of liberal government, but it would literally destroy all confidence in our moneyed institutions and financial legislation, withdraw from our country, to a great extent, the foreign capital now here, and entirely prevent for years the investment of any more. Such a catastrophe will, moreover, injure, if not seriously impair, the public credit of our state; she will lose her most powerful and willing supporters in carrying through the several large and extensive works of internal improvement which she has already and must soon undertake. She has already had substantial evidence of what she may expect from the banks which have sprung up at once into full stature from the ashes of the extinguished spirit of banking monopoly, which has so long oppressed all our citizens except a favored few.\*

These views are not presented with the wish or expectation that they will deter this court from a fearless discharge of its duty, in considering and determining upon the constitutionality of this law, but for the purpose of awakening a profound and anxious attention to the momentous question presented for their decision, and in the hope that they may induce the court to form and announce their judgment at the earliest day possible,

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\* The Bank of Commerce has already made large loans to the state, by accepting those offered to the public by the Canal Board.

consistent with a just regard to the grave character of the subject.

My intention is to present and fairly meet every argument or suggestion which has or can be made against the validity of this statute, whether insisted on by the counsel for the defendant or not, with the hope that this discussion may not only satisfy this court of its constitutionality, but that the public mind may be composed, so far as my humble efforts can accomplish that end, by exhibiting, in a clear light, the firm basis on which the institutions rest which have been organized under and are protected by it.

*History of the Restraining Act.*—We have in this state prohibited by statute for so many years both individuals and companies, incorporated and unincorporated, not specially authorized by law, from carrying on the business of banking, and permitted it to be done only by corporations created specially for that purpose, that we have come to regard banking as a franchise, an attribute of sovereign political power, which a citizen cannot exercise or acquire except by legislative grant. This is a great error. The direct converse of the proposition is the truth. The states of this Union are prohibited by the Constitution of the United States from emitting bills of credit. (Con. U. S., Art. 1, Sec. 10.) Although the bills of credit, in the mind of the convention who framed that Constitution, and intended to be prohibited, were unlike, in many material respects, bank bills of the present day, yet the Supreme Court of the United States have held that “bills of credit” are general terms of broad import, and do embrace bank bills issued by a state, on the faith of the state, to circulate as money; and consequently have decided that a state has not authority to issue such bills. (*Briscoe and others vs. The President and Directors of the Bank of the Commonwealth of Kentucky*, 11 Peters’ R. 257.) As issuing bills to circulate as money is the most important and valuable feature of our system of banking, this decision of the Supreme Court of the United States effectually restrains the states from engaging in it.

We commenced our restraints upon private banking in this state at an early day. On the 26th of May, 1781, Congress incorporated the “Bank of North America,” and recommended to the several states of the Confederation to provide by law “that no

other bank or bankers shall be established or permitted within the said states during the war." In pursuance of this recommendation, this state passed an act on the 11th April, 1782, incorporating the "Bank of North America" within this state, and declaring "that no other bank, public or private, shall be established within this state during the present war with Great Britain, on pain of the forfeiture of one hundred pounds for every offence by every person concerned in such bank or banks." (1 Green, 50.) After the treaty of 1783, which secured our independence, there was no necessity for restraining banking. On the contrary, I have understood it was difficult to induce capitalists to invest their funds in such business; and so much so, that when "The Bank of New York" was incorporated on the 21st March, 1791, which was the first bank incorporated in this state after the war, it was difficult to obtain subscriptions for the stock, and appeals were made to the patriotism of the citizens to come forward and take it up as a measure of public benefit. After incorporating the Bank of Albany on the 10th of April, 1792, the Bank of Columbia at Hudson on the 6th March, 1793, the Manhattan Company on the 2d April, 1799, and the Farmers' Bank of Troy, on the 31st March, 1801, and pressing applications for several others having been made, the Legislature, on the 11th April, 1804, passed an act entitled, "An act to restrain unincorporated banking companies," generally denominated the "Restraining Act." (3 Web. 615, 27th Sess., ch. 117.) This statute prohibits, under heavy penalties, all persons, associations, or companies, from banking, unless specially authorized by law. This statute has been continued to the present time, and is still in force, having been strengthened and its severity increased from time to time by amendments. (2 R. S. 234; Laws of 1818, p. 242, 41st Sess., ch. 236, Sec. 1—2; 1 R. S. 712.) But for these laws, every citizen, association, copartnership, or company, would have an unqualified right to commence and carry on the business of banking; and the very passage of the acts shows the existence of that right. Let it then be distinctly understood and remembered that banking is no franchise, no attribute of sovereign power, to be granted by the Legislature to her citizens, either as individuals or members of associations; but a right that belongs to them, unless taken away by legislative enactment. Even in England, where privi-

lege and monopoly are rife, and where the very existence of the government almost depends on sustaining the Bank of England, the business of banking is permitted to all, except in a comparatively small district around London.

*Only parts of the Statute assailable.*—So far, then, as the statute under consideration operates as a mere repeal of our restraining acts, it is not only unobjectionable but meritorious; for, so far, it is a restoration of our citizens to their former rights. Those sections or parts of the statute only can be assailed, which confer powers on the associations which it authorizes, analogous to those usually conferred on corporations.

*Sections assailed.*—An examination of the statute will direct us at once to those parts of it which are supposed to confer corporate powers. They are the following:

“§ 15. Any number of persons may associate to establish offices of discount, deposit, and circulation, upon the terms and conditions, and subject to the liabilities, prescribed in this act.

“§ 16. Such persons, under their hands and seals, shall make a certificate which shall specify :

“1. The name assumed to distinguish such association, and to be used in its dealings :

“5. The period at which such association shall commence and terminate.

“§ 18. Such association shall have power to carry on the business of banking, by discounting bills, notes, and other evidences of debt ; by receiving deposits ; by buying and selling gold and silver bullion, foreign coins, and bills of exchange, in the manner specified in their articles of association for the purposes authorized by this act ; by loaning money on real and personal security ; and by exercising such incidental powers as shall be necessary to carry on such business ; to choose one of their number as president of such association, and to appoint a cashier and such other officers and agents as their business may require, and to remove such president, cashier, officers, and agents, at pleasure, and appoint others in their place.

“§ 19. The shares of said association shall be deemed personal property, and shall be transferable on the books of the association in such manner as may be agreed on in the articles of association ; and every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all the rights and liabilities of prior shareholders ; and no change shall be made in the articles of association by which the rights, remedies, or security of its existing creditors shall be weakened or impaired. Such association shall not be dissolved by the death or insanity of any of the shareholders therein.

“§ 21. Contracts made by any such association, and all notes and bills by them issued and put in circulation as money, shall be signed by the president or vice-president and cashier thereof; and all suits, actions, and proceedings brought or prosecuted by or on behalf of such association, may be brought or prosecuted in the name of the president thereof; and no such suit, action, or proceeding shall abate by reason of the death, resignation, or removal from office of such president, but may be continued and prosecuted according to such rules as the courts of law and equity may direct, in the name of his successor in office, who shall exercise the powers, enjoy the rights, and discharge the duties of his predecessor.

“§ 22. All persons having demands against any such association, may maintain actions against the president thereof, which suits or actions shall not abate by reason of the death, resignation, or removal from office of such president, but may be continued and prosecuted to judgment against his successor: and all judgments and decrees obtained or rendered against such president for any debt or liability of such association, shall be enforced only against the joint property of the association, and which property shall be liable to be taken and sold by execution under any such judgment or decree.

“§ 23. No shareholder of any such association shall be liable in his individual capacity for any contract, debt, or engagement of such association, unless the articles of association by him signed shall have declared that the shareholder shall be so liable.

“§ 24. It shall be lawful for such association to purchase, hold, and convey real estate for the following purposes:

“1. Such as shall be necessary for its immediate accommodation in the convenient transactions of its business; or,

“2. Such as shall be mortgaged to it in good faith, by way of security for loans made by, or moneys due to, such associations; or,

“3. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings; or,

“4. Such as it shall purchase at sales under judgments, decrees, or mortgages held by such association.

“The said association shall not purchase, hold, or convey real estate in any other case or for any other purpose; and all conveyances of such real estate shall be made to the president, or such other officer as shall be indicated for that purpose in the articles of association; and which president or officer, and his successors, from time to time may sell, assign, and convey the same, free from any claim thereon, against any of the shareholders, or any person claiming under them.”—[*Laws of 1838, ch. 260, p. 245.*]

*Essence of a Corporation.*—The ordinary incidents to a corporation are well stated by Chancellor Kent in his Commentaries. They are—“1. To have perpetual succession, and, of course, the power of electing members in the room of those removed by death



or otherwise; 2. To sue and be sued, and to grant and to receive by their corporate name; 3. To purchase and hold lands and chattels; 4. To have a common seal; 5. To make by-laws for the government of the corporation; 6. The power of amotion or removal of members. [2 K. Com., pp. 277, 278, 2d ed.]

Although these are the ordinary powers of a corporation, they are by no means peculiar to it. Every one of them probably, and most of them certainly, may be, and often are, possessed and enjoyed by voluntary associations, in the form of copartnerships or joint-stock companies. And in this respect the associations authorized by the statute are like all other voluntary associations or copartnerships. For it must be admitted that they have, substantially, many of the powers ordinarily possessed by corporations. But that circumstance is far from constituting them, technically, legally, or really, bodies corporate. The members of a strict copartnership may agree in their articles of association to have succession perpetual, or for a designated number of years, by admitting the representatives of every member who should die or otherwise cease to be a member, or by electing a person in his place, or in any other mode their fancy or interest should suggest. They may also agree to have a common seal, and that it shall be affixed to all contracts, and that they will not be bound unless it is so affixed. And such an agreement would doubtless bind all the members of the copartnership, and all persons who dealt with them and had knowledge of it. They may also, by agreement, make, or provide for making, by-laws for the government of themselves, their successors, and agents, and provide for and regulate the manner and declare the cause of removal of the members of the copartnership. Yet copartnerships are not corporations. When viewed and compared in general, they are easily distinguished; but the task, I apprehend, is difficult, to ascertain satisfactorily the unequivocal indicia and the peculiar and distinctive characteristics of a corporation which mark it and distinguish it from every other legal or natural being. And the difficulty is increased by the consideration that any one, more or all, of the ordinary powers of a corporation may be conferred by statute on a joint-stock company, and still not give it the character of a corporation; and, on the contrary, a corporation may be created by statute, which has only one, or even none, of the



ordinary corporate powers, but others which better subserve the end of its creation.

Difficult, however, as the duty is to ascertain and present the peculiar features and essential requisites of a corporation, its performance must be attempted in the course of this argument.

In this country there is only one mode of creating corporations, and that is by statute, or in other words, by grant, from the sovereign power. This is a well-settled principle in our jurisprudence. Whatever diversity of opinion there may have been, and still is, respecting the power of the Federal Government to create corporations, for purposes within its acknowledged powers and duties, all agree, that the several states have full authority to create them for all objects within the range of their legislative action. They have exercised this portion of sovereign power freely, and in some instances perhaps too freely; but an ample apology for this is found in the reflection, that strength lies in union, and emphatically so in this country, yet in its youth and comparatively without capital. It has been only by uniting and combining our means and efforts, that the resources of the country have been so rapidly developed; and corporations have furnished a natural, safe, and easy form of association.

The usual, and I think it may safely be said the only, mode of creating corporations in this country, is by clear and direct legislative enactment, declaring that certain persons thereby are and shall be a body corporate; or, that if any persons shall perform certain prescribed acts, then they shall be a body corporate. In either case, the corporation is brought into being by the declared will of the sovereign power. It may be stated, without qualification, that there is not a corporation in this state (and it is believed there is not one in this country), which has not been created by statute, containing a direct and explicit declaration of the will of the Legislature to that effect; and it may well be doubted, if not directly asserted, that a court ought not to hold an association to be a corporation which the Legislature has not clearly declared shall be one. This view of the subject will be hereafter adverted to and more fully enforced.

As it is not pretended, however, that the associations under the General Banking Law are corporations, by virtue of a direct and unequivocal legislative enactment, but are so in consequence

of the Legislature having conferred on them corporate powers, let us meet the question, first, in this aspect.

The proposition being undeniable, that in this country, and especially in this state, corporations can only be created by statute, it is evident that the Legislature must call them into being, either by a direct act, or by conferring on voluntary associations the peculiar characteristics and essential requisites of a corporation. And the counsel for the defendant contends, that the Legislature has, in the latter mode, constituted the associations authorized by the General Banking Law, corporations.

This leads directly to an inquiry after the peculiar features and essential requisites of a corporation.

The result of my reflection and investigation is, that there are only four distinctive indicia which mark an aggregate corporation, and separate it from everything else.

They are—

FIRST. *A collective existence by name, created by the sovereign power, exercised directly or mediately.*

This characteristic is often expressed in different language. Chancellor Kent calls it, “a capacity to have perpetual succession, under a special denomination and an artificial form.” (2 K. C. 277, 2d ed.) This phraseology indicates mere being by name, to which may be attached the qualities of beginning, end, perpetuity, enjoyment of rights, and the performance of duties. Chief Justice Marshall, who always appears, when discussing a subject, to have his mind constantly fixed on the principles and true nature of things, speaks of this feature of a corporation in this way: “A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it. \* \* \* Among the most important are *immortality*, and, if the expression may be allowed, *individuality*; properties by which a perpetual succession of many persons are considered as the same, and may act as the single individual.” [Dartmouth College vs. Woodward, 4 Wheat. Rep. 636.]

The existence of a corporation enables many persons to have succession in the enjoyment of the franchise conferred: and if its existence is perpetual, then perpetual succession. Succession,

however, is a property of the individuals who exercise the corporate rights. They succeed each other. But to say that the corporation itself has perpetual succession, which is the expression in general use, and sufficiently accurate for general purposes, appears to be a solecism. Besides, there may be aggregate corporations which have no succession. Twenty individuals may be incorporated on the principle of tontine, or, in other words, till the death of all the corporators but one; and the share of each, instead of being transferable, to belong to the survivors, and the last one to take the whole corporate fund. And in a great variety of other forms, aggregate corporations may be created, without giving to them the property of succession. Every corporation will be without it, whose charter confines the exercise of its corporate rights to certain designated individuals. *Perpetual succession* is wholly inapplicable to corporations created for a given time. It can only apply to those which have perpetuity, of which there are many, but not near so many as there are whose existence is to continue for a definite period. Whatever there is of succession connected with a corporation which has a fixed period for its termination, is *continued succession*.

But succession is not peculiar to corporations. It often is, and may always be, a property of voluntary associations, if the associates choose so to agree in their articles of association. Strict partnerships are frequently formed under an agreement to admit succession of membership. Almost all the voluntary associations which have been formed in this country within the last four or five years, and there have been not a few, for the purchase of and speculation in lands, have contained provisions for succession of associates. The joint-stock companies in England, for banking and other purposes, also have succession.

When, therefore, we apply the term *succession* to a corporation, as a property peculiar to it, we express no more than mere *continuation* or *being*. A corporation has an existence independent of succession, and is known to the law without that property. In grants of lands to corporations, the word "successors," though usually inserted, is not necessary to convey a fee simple. (Ang. and Am., p. 89, ch. 5, sec. 5.) An aggregate corporation includes the idea of an association of two or more individuals; and hence it is a *collective existence*. And as its existence is only in con-

templation of law, it can only be known by name; and hence is a collective existence *by name*. And as it can only be created by the sovereign power, exercised directly in calling it into being, or more circuitously by prescribing certain acts the performance of which shall constitute a body corporate, embracing those who perform them, it is *created by the sovereign power exercised directly or mediately*.

Creation by *sovereign power* is the peculiar feature of the existence of a corporation. A partnership, joint-stock company, and every other voluntary association, has a collective existence, and by name. But such existence and name rest on contract—they arise from the voluntary agreement of the associates—they have their origin in the will of individuals. Not so with a corporation. It derives its being from a higher source—from the sovereign power. The legislature, in which that power rests, speaks, and the corporation comes into being, with the properties of beginning, continuance, and end, unless the creating power declares its existence shall be perpetual—and then, with the properties of beginning and perpetual continuance. Not only the being itself, but the *name* also by which it shall be known, must come from the same source, to distinguish a corporation from other associations. This name, too, in the language of the books, must be a *common* name; that is, fixed, uniform, unchangeable, not dependent on the will of individuals. And although a corporation may have two names, one “by which it may take and grant, and another by which it may plead and be impleaded” (Ang. and Am. 56), yet whatever name it has, must come, I apprehend, from the creating power, and be conferred by it. It is impossible to conceive of a legal entity, taking, giving, and enforcing rights, without a name. With its creation, therefore, must be given its name—they are inseparable. This intangible, invisible existence, can only be known by its proper designation, and the name must represent the collective existence, not an officer of the corporation, not an individual, not anything, except the corporation. It is the *name* of the *corporation*.

SECOND. *A standing in court as a collective existence, by a given name or designation, with the rights and liabilities of a party litigant.*

This is obviously an essential requisite of a corporation. It

can neither have nor maintain a legal existence, unless it is able to resort to the judicial tribunals of the state to enforce its rights; nor could the community tolerate a being which had power to enforce rights in its favor, and yet was not amenable to the courts of justice, so that rights might be enforced against it. As parties cannot litigate in our courts without names, every corporation must have a name by which it can sue and be sued. This is a feature which clearly distinguishes corporations from voluntary associations. No such association can sue or be sued in its assumed name; but the parties who compose it must appear before the court, or those in whom their property is vested in trust for them. The distinction is between the collective existence appearing by its name and individuals appearing by their names. In the former case the court recognizes the body corporate as a legal existence, having a right to be heard; and in the latter, it recognizes individuals, who claim to be heard in their own right, or as trustees for others. The idea should be kept distinctly in view that this peculiar feature of a corporation consists in the right of the *corporation itself* to appear in court by its *own name*, and not in the name of one of its officers, or of any other person as a trustee for it. Voluntary associations often, and municipal corporations occasionally, are permitted by statute to sue and be sued in the name of some officer or trustee. The joint-stock companies in England, I believe, are all permitted to sue and be sued in the name of any of their registered officers; and several of our cities and villages, which are municipal corporations, are allowed to sue in the names of their officers; but I am not aware that any private corporation in this state can sue or be sued except in its corporate name. While a voluntary association may be allowed by statute to sue and be sued in the name of one of its officers, without thereby becoming a corporation, so a corporation may, by a statutory provision, sue or be sued in the name of one of its officers, without losing its corporate character. But a collective existence, irrespective of individuals, suing and being sued by its name, is a peculiar property of a corporation, and belongs to no other kind of association.

THIRD. *Power to take and convey title to property, acquire and give rights as a collective existence, and by its given name or designation.*



This is another distinctive characteristic of a corporation, which separates it from all other associations. When a copartnership, or any other unincorporated company, takes a title to real or personal property, that title is conveyed to or vests in the individual members of the company, or some of them, designated by agreement to receive it for the benefit of all. And when title is transferred by such an association to a third person, it is not conveyed by the company in its collective capacity, but by the individuals who compose it, or by those who hold the title for them. While the company buy with the common fund and sell to benefit it, and the transactions are, in fact, those of the association, the title to their property comes and goes to and from one or more individuals. A corporation alone, of all associated action, takes and conveys title, acquires and gives rights, collectively and by its collective name.

FOURTH. *Power conferred by statute to make by-laws, or, in other words, to prescribe rules of action for persons without their consent.*

This power is always enumerated among the ordinary incidents to a corporation; but two distinguished writers have not considered it among the essential requisites. Chancellor Kent has not mentioned it when stating the essence of a corporation (2 K. C. 277, 2d ed.), and Mr. Kid expressly says it "is not so inseparably incident to a corporation *aggregate* that it cannot subsist without it; for there are some aggregate corporations to which rules and ordinances may be prescribed, and which they are bound to obey." [1 Kid on Cor. 69.]

The legislature may, undoubtedly, when creating a corporation, enact its by-laws and prohibit it from making any others. So the legislature may mould these artificial beings into any form which the public interest may require, or even the fancy of a committee suggest, and give them all or none of the peculiar features of a corporation, as has been already remarked. But when inquiring, as we now are, for the distinctive characteristics of a corporation, without reference to direct and effective legislative action, the question is not what the legislature, which has unlimited authority in this respect, can do, or might have done, in any given case; but what is the essence of a corporation, independent of the creative action of the sovereign power?—and we

are not aided in the latter by ascertaining the former. Hence the remark of Mr. Kid, that the power to make by-laws is not an inseparable incident to an aggregate corporation, because rules and ordinances may be prescribed for some aggregate corporations which they are bound to obey, appears to be unsound in principle, and his reason to be wholly insufficient for his proposition.

The point of inquiry is, Can a corporation exist without by-laws? and if they are not made for it by the power which creates it, must not the corporation itself have authority to make them? Chancellor Kent takes his statement of the essence of a corporate body from Mr. Kid, and cites him as his authority. (2 K. C. 277, 2d ed.) We have then only Mr. Kid's assertion, for he cites no authority, that power to make by-laws is not an inseparable incident to a corporation.

A corporation acts wholly by agencies. It can do nothing itself. It is a collective being, invisible, intangible, and exists only in contemplation of law. It is neither seen nor felt except by its agents. Those agents are its officers and servants; they act under authority, and their duties and liabilities are regulated and tested by the rules which regulate the relation of principal and agent. These are well-established principles.

How can a corporation have an effective existence without power to prescribe rules of action for its officers and servants? Let it have existence, a right to sue and be sued, and to take and convey title—can it then act efficiently? Does it not yet want one more requisite of life? Does it not want power to regulate and direct its action? And as it acts through the instrumentality of agents of all grades, from the president down to the servant, must not that power be one which enables the corporation to prescribe rules of action for persons without their consent? The acts of every corporation in this state may be appealed to for the purpose of showing that the exercise of this power is universal; and I doubt whether there is a corporation in the state which, if all its by-laws were repealed, and the power taken from it of enacting others, could fulfil the object of its creation; and if not, it must of course cease to exist. This power, too, must be exercised irrespective of the consent of the persons affected by it: otherwise every member or agent of a corporation must express his consent to be bound by its by-laws; and when

their efficacy depends on consent, their character is entirely changed. They then become matters of contract; they cease to be laws and become agreements.

Of the latter character are all the rules and by-laws of voluntary associations. Their whole basis is contract, and the superstructure is the same. Herein lies the difference between corporations and all unincorporated companies. The former have authority from the sovereign power to make by-laws, and may, therefore, prescribe rules of action for persons without their consent; the latter have no such authority, and can only prescribe rules of action for their members, agents, or others, with their consent; and thus the power to make by-laws which control the action of individuals without their consent, is a peculiar feature of a corporation.

The four requisites above stated, when united, constitute an effective being, which can perform the functions of legal life; and without either, is helpless, unless the defect is supplied or other powers given by statute. But to give a voluntary association the character of a corporation by reason of its possessing corporate powers, we must be satisfied that it has *all* these four requisites.

Other properties have been said to be peculiar to corporations, but do not appear to be so on reason or authority.

*One* of those is a *seal*. Formerly it was held that a corporation could only be bound by its seal; and when that was the rule, a seal was, of course, of the essence of a corporation. But that rule has been abrogated for years. And now a seal, though an ordinary and very important incident to a corporation, is no longer an essential requisite. (*Steel vs. The Oswego Cotton Manufacturing Company*, 15 Wend. R. 265.) We must not, however, undervalue it. It may be stated, without the fear of contradiction, that the Legislature of this state has never incorporated a company by special or general act without giving it a right to have a common seal. It is a universal index of a corporation, and will aid materially in the inquiry hereafter to be instituted, respecting the intention of the Legislature to constitute the associations in question corporations.

*Another* is the right of "*enjoying privileges and immunities in common.*"

Mr. Kid, in his introduction (1 K. on Cor. 13), specifies the properties of a corporation, and among them mentions this one. But in the body of his work, when enumerating the capacities “necessarily and inseparably incident to every corporation,” does not mention this as one. (1 K. on Cor. 69.) Chancellor Kent, also, in his statement of the essence of a corporation, which in this particular is evidently taken from Mr. Kid’s introduction, mentions the capacity to “receive and enjoy, in common, grants of privileges and immunities.” (2 K. C. 277, 2d ed.) The right *to receive and enjoy grants of privileges and immunities* is, in the opinion of all, an essential requisite of a corporation. It is but a different mode of expressing the right to take title to property; and to this leading idea the Chancellor’s mind was doubtless directed. The quality of enjoying privileges and immunities in *common*, to which Mr. Kid appears to have attached importance in his introduction, is incidentally thrown in by Chancellor Kent, and evidently without intending to present it as a necessary incident. No other author and no adjudged case mentions this property as peculiar to corporations; and it certainly is not, for every voluntary association enjoys all its rights in common. Common enjoyment, common advantages, are incident, and necessarily incident, to every association. Nor is there anything in the character of the objects enjoyed—viz., *privileges and immunities*. For the enjoyment of them is not peculiar to corporations. Chancellor Kent, in the sentence next to the one just quoted, thus expresses himself: “According to the doctrine of Lord Holt, neither the actual possession of property nor the actual enjoyment of *franchises* are of the essence of a corporation.” [2 K. C. 277, 2d ed.]

*Another is the exemption of the members of a company from personal liability for its debts.*

This is said by some to be peculiar to a corporation, and to distinguish it from a partnership. That is a mistake. Members of corporations are often made personally liable, by the acts of incorporation, for the debts of the company. Sometimes in whole, and sometimes in part. We have many instances of this kind in our state, both in our general and special acts of incorporation. We have also a striking instance of members of a copartnership being liable only to a qualified extent for the

copartnership debts. I allude to our statute concerning limited partnerships.

The members of all voluntary associations may, by agreement, regulate the extent and nature of their liability for the company debts, and such agreement will certainly bind the parties to it, and, probably, all persons dealing with the association and having knowledge of it.

It may doubtless be safely assumed, that exemption, in whole or in part, of the members of a company from personal liability for its debts, is not an essential requisite of a corporation.

*Another, and the last, is the transferability of shares without any restriction, at the mere will of the holder.*

Were it not that some English cases countenance the idea, that unqualified transferability of shares is a peculiar feature of a corporation, it would be unnecessary to dwell long on this topic. For it must be evident to all, that this is a matter which may be regulated by contract in all voluntary associations; and may exist, or not, in corporations. Partnerships and joint-stock companies not only may, but do in fact, regulate the transfer of stock; sometimes permitting them, without any restriction; at others, restraining them to transfers on the books of the company; at others, until the debts due by the holder to the company are paid. And the like provisions are often made in our acts of incorporation; but more frequently the transfer of stock is left to the discretion of the corporation, with power to regulate it in their by-laws.

The cases referred to arose under an English statute, which, with the decisions upon it, furnish the strongest judicial light I have discovered on the subject of the essential requisites of a corporation; and, although the statute is now repealed, the light which it elicited still shines to aid and direct the search for truth. I will pass for the present, therefore, the subject of the transferability of stock, and endeavor by authority to show that there are four, and certainly not more than four, essential requisites of a corporation, and that they are the same which I have already stated and attempted to illustrate.

The statute and decisions are given by Collyer, near the close of his excellent Treatise on the Law of Partnership. (Coll. 620 to 625.) The Act (6 Geo. 1, c. 18, s. 18), after reciting, among



other things, in substance, that several undertakings or projects of different kinds have, at times, been publicly contrived and practised to the common grievance of great numbers of subjects, and the persons who contrive them presume "to open books for public subscriptions, and draw many unwary persons to subscribe therein, towards raising great sums of money." "And, whereas, in many cases, the said undertakers or subscribers have presumed to act as if they were corporate bodies, and have pretended to make their shares transferable or assignable without any legal authority," &c.; for remedy enacts, among other things, that all such undertakings, "and more particularly the acting, or presuming to act, as a corporate body; the raising, or pretending to raise, transferable stock; transferring, or pretending to transfer, or assign, any share in such stock without legal authority, &c., shall be deemed illegal and void." A subsequent section declares these offences public nuisances, and subjects the offenders to the penalties of *præmunire*, to fines and punishments.

A single case occurred under the Act about two years after it was passed; a person being found guilty on an information "for setting up a bubble called the North Sea." From that time until 1808, an interval of about eighty-seven years, the statute appears to have been forgotten. In that year a case occurred under it, and soon afterwards several others.

"The offences," says Mr. Collyer, "which are more particularly pointed out by the statute, are, the presuming to act as a corporate body—the raising transferable stock—the transferring such stock; \* \* \* \* \* .

"With regard to the specific offences mentioned by the act, it seems to have been universally agreed, that the *acting as a corporate body* is an offence very difficult to be defined. It may, perhaps, be inferred, from other parts of the statute, that this enactment was directed against persons who pretended to be in possession of some charter of incorporation, and not against every species of society. But, however this may be, it seems to be unquestionable, that there are particular offences of this nature for which an indictment will lie, not only under the statute, but even at common law. It is apprehended, however, that the more general charge of acting as a corporation would not be sufficient to support an indictment at common law, but that there must be additional averments, stating with particularity the nature of the offence.\*

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\* See *M'Callum v. Turton*, 2 Younge & Jerv. 183.

“As to the particular offences alluded to, it seems more easy to say what is *not*, than what is, an act of assuming a corporate capacity. It is clear that the assuming a common name, for the purpose of designating the society, the using a common seal, and making regulations by means of committees, boards of directors, or general meetings, were not illegal within the statute, and are not illegal at common law. In *The King v. Webb*, Lord Ellenborough said—“As to the fourth point, that the subscribers have presumed to act as if they were a body corporate—how is this made out? It was urged that they assumed a common name (which, however, does not appear to have been the case), that they have a committee, general meetings, and power to make by-laws; but are these the unequivocal *indicia* and characteristics of a corporation? How many unincorporated insurance companies, and other descriptions of persons, are there, that use their common name, and have their committees, general meetings, and by-laws? Are these all illegal? or which of these particulars can be stated, as being of itself the distinctive and peculiar criterion of a corporation? So in the case of *Ellison v. Bignold*,\* where it appeared that the directors of an insurance company had, by their deed of settlement, the power of making orders and by-laws, and that a seal was to be fixed upon for the use of the company, it was urged that this amounted to an assumption of a corporate character; but Lord Eldon appears to have taken no notice of this objection, and to have considered the legality of the association as depending entirely on the manner in which the shares were made transferable. In addition to these authorities we may add, that the numerous acts of Parliament for enabling certain companies to sue and be sued by their secretary, seem to assume the legal existence of the various powers of which we have just been speaking.

“It seems clear, therefore, that whether we view this subject with reference to the repealed statute, or the existing common law, they alone are to be considered as assuming to act as a corporate body, who usurp the ‘unequivocal *indicia* and characteristics which form the distinctive and peculiar criterion of a corporation.’ It is not to be doubted, however, that they who are parties to proceedings of this nature are guilty of an offence in law. Thus, corporate bodies alone can use a common name for the purpose of suing, contracting, conveying, or accepting conveyances; and to affect the use of a common name for these purposes would, perhaps, in every case, be contrary to law. Again, corporate bodies have the power of binding their members by the acts resolved upon in the manner prescribed by their charters, which power they derive from their corporate character, and not from contract and agreement between themselves;† on the other hand, voluntary

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\* 2 Jac. & Walk. 503; and see *Pearce v. Piper*, 7 Ves. 1; *Carlen v. Drury*, 1 Ves. & Bea. 157. But Lord Eldon's opinions in these cases seem to have been guided by his own notion of the utility or inutility of each association as they passed in review before him. He seems to have considered, that the mischievous tendency of the associations was a question for the judge and not for the jury. See *Lloyd v. Loaring*, 6 Ves. 776.

† See *Adley v. Whitstaple Company*, 17 Ves. 315.

associations are governed entirely by the rules which the parties have themselves agreed to. Hence, if the committees or meetings of an unincorporated society were to assume to exercise, independently of any contract or agreement for that purpose, a general power of binding their members, it might reasonably be contended that such an act was illegal and indictable. The only act, however, which has been expressly stated to be an assuming to act as a corporation, is that of making the shares *transferable, without any restriction, at the mere will of the holder*.

"The *universal* illegality of this proceeding was doubted, as we have before observed, by Lord Ellenborough. But, in *Joseph v. Pebrer*,\* it was held to be universally illegal, not only, as it should seem, under the words of the statute on that particular point, but with reference to the more general offence of acting as a corporation. This manner of treating the subject leads to the conclusion, that since the statute has been removed, a proceeding of this nature is to be considered as an offence at common law; and the words of Best, C. J., in a subsequent case, are confirmatory of this opinion. 'There can be no transferable share of any stock, except the stock of corporations, or of joint-stock companies created by acts of Parliament. Indeed, the members of corporations cannot assign their interest, and force their assignees into the corporation, without the authority of an act of Parliament. Such authority is expressly given by the Bank acts, the South Sea acts, and by other statutes, creating companies that possessed stock which it was deemed proper to render transferable. The pretending to be possessed of transferable stock, is pretending to act as a corporation, and pretending to possess a privilege which does not belong to many corporations.' †

"But where the shares are not transferable at the mere unrestricted option of the holder, the association, as far as relates to that matter, will be legal. In the case of *The King v. Webb*, which has been so often referred to, the shares could not be transferred to any person who would not enter into the original covenants: nor could more than twenty be held by the same person, unless they came to him by operation of law; and the object of the society, which was to supply the inhabitants of Birmingham, being shareholders, with bread and flour, virtually limited the transfer of shares to persons residing in the neighborhood. And the Court of King's Bench gladly availed themselves of these circumstances in order to hold the association legal. So, in *Pratt v. Hutchinson*,‡ which was the case of a building company, no person could become a member of the company until he had made himself a party to the partnership articles, nor until he had been proposed and approved by a certain majority of persons present at the meeting of the society. And the court held that these restrictions on the transfer of the shares preserved the legality of the association."

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\* 3 Barn. & Cres. 639; 5 Dowl. & Ry. 542.

† 4 Bing. 267.

‡ 15 East, 511; and see *Davies v. Hawkins*, 3 Mau. & Selw., 488.

From these cases, the difficulty is evident of ascertaining satisfactorily the peculiar characteristics of a corporation. Aside from the transferability of stock, which will be hereafter examined, it would appear that "corporate bodies alone can use a common name for the purpose of suing, contracting, conveying, or accepting conveyances," and that they "have the power of binding their members by the acts resolved upon in the manner prescribed by their charters, which power they derive from their corporate character."

These are, substantially, the second, third, and fourth requisites before stated. The first—viz., collective existence by name—is not alluded to in these cases, and doubtless because the statute did not declare it illegal to assume *to be*, but *to act*, as a body corporate, and the attention of the court, consequently, was not turned to that feature of a corporation.

There is some further, though less direct, light on the subject in our own state.

This court, in the case of *The People vs. Morris* (13 Wend. 335), speak of the properties of a corporation in this manner: "They (towns) possess every requisite to constitute them corporations, besides being declared to be so by statute. Each town, as a body corporate, has capacity to sue and be sued; to purchase and hold real estate; to make such contracts and hold such personal property as may be necessary to its corporate and administrative powers; and to make such order for the disposition, regulation, and use of its public property as may be conducive to the interests of its inhabitants."

The Legislature declared by statute in 1830 what should be the incidents to all corporations thereafter created.

The act is as follows:

"§ 1. Every corporation, as such, has power,

"1. To have succession by its corporate name for the period limited in its charter; and when no period is limited, perpetually:

"2. To sue and be sued, complain and defend, in any court of law or equity:

"3. To make and use a common seal, and alter the same at pleasure:

"4. To hold, purchase, and convey such real and personal estate as the purposes of the corporation shall require, not exceeding the amount limited in its charter:

"5. To appoint such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation :

"6. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock." [1 R. S. 599—600.]

The first, second, fourth, and sixth incidents are essential; the third and fifth, ordinary and convenient.

The counties and towns of this state have, by statute, the essential requisites of corporations. [1 R. S. 364; 337.] The laws giving them are in the following words :

"§ 1. Each county, as a body corporate, has capacity,

1. To sue and be sued in the manner prescribed by law :

"2. To purchase and hold lands within its own limits, and for the use of its inhabitants, subject to the power of the Legislature over such limits:

"3. To make such contracts and to purchase and hold such personal property as may be necessary to the exercise of its corporate or administrative powers: And,

"4. To make such orders for the disposition, regulation, or use of its corporate property as may be deemed conducive to the interests of its inhabitants."

"§ 1. Each town, as a body corporate, has capacity,

"1. To sue and be sued in the manner prescribed in the laws of this state :

"2. To purchase and hold lands within its own limits, and for the use of its inhabitants, subject to the power of the Legislature over such limits:

"3. To make such contracts, and to purchase and hold such personal property, as may be necessary to the exercise of its corporate or administrative powers: And,

"4. To make such orders for the disposition, regulation, or use of its corporate property as may be deemed conducive to the interests of its inhabitants."

The counties and towns, having been previously created and then existing by name, became possessed, on the passage of these sections of the statute, of all the essential features of corporations; and yet they are not considered strictly corporations. Chancellor Kent denominates them quasi corporations. (2 K. C. 278, 2d ed.) And this court in the case of *The People vs. Morris* (13 Wend. R., 335), holds them to be political or municipal corporations. They are certainly not private corporations, for although they have all their essential requisites, they have



other characteristics so important and controlling as to place them in another class of legal entities. They do not embrace a few individuals and exclude the many. They cover the whole community. All may come within their jurisdiction. They have legislative, judicial, and executive properties. Their powers are exercised for the public benefit, and not for the advantage or profit of a few. Their existence and properties show the uncontrolled power of the Legislature to create legal beings and cast them from any mould, new or old, and the impossibility of confining the exercise of that power to any known forms of legal existences.

Chancellor Kent has given the essence of an aggregate corporation with more accuracy than any other author. He says: "And the essence of a corporation consists only of a capacity to have perpetual succession under a special denomination and an artificial form, and to take and grant property, contract obligations, and sue and be sued by its corporate name, and to receive and enjoy, in common, grants of privileges and immunities." [2 K. C., 277, 2d ed.]

No controversy has ever arisen within my knowledge, except the present, which turned on the single question, What are the essential features of a corporation? The cases on the English statute blend that with other subjects, and not one of them is placed entirely on that ground. It is not strange, therefore, that there should be looseness of thought and inaccuracy of expression on the subject.

After giving to it the fullest reflection and examination in my power, I submit to the better judgment of the court the four essential requisites above stated, as the only ones which enter into and form the essence of a corporation.

The next step in the argument is to examine our statute which authorizes the business of banking, and see if the associations which it permits have these essential features of a corporation. Before proceeding to that, however, I will revert to and dispose of the alleged corporate feature, which consists of the transferability of stock.

It will be observed that this property is not mentioned by any author, nor in any case except the English cases, as a corporate attribute. It appears to have originated wholly from the English

statute, and the error of considering it a corporate property has arisen, I apprehend, from a want of care in judging of it as a distinct offence, which it is by that statute, instead of judging of it as a corporate act, and as such an offence by the statute. A few references to the language of the act, and the decisions upon it, will show this.

The recital is: "And whereas in many cases the said undertakers and subscribers have presumed to act as if they were corporate bodies, and have pretended to *make their shares transferable* or assignable without any legal authority," &c. And the enactment is that such undertakings, "and more particularly the acting or presuming to act as a corporate body, *the raising or pretending to raise transferable stock, transferring or pretending to transfer* or assign any share in such stock, without legal authority, &c., shall be deemed illegal and void."

"The offences," says Mr. Collyer, "which are more particularly pointed out by the statute, are the presuming to act as a corporate body; the raising transferable stock; the transferring such stock."

The transferring of stock is thus obviously a distinct offence from that of presuming to act as a corporate body. Either might be committed and punished without the other. Yet says Mr. Collyer, in a subsequent page: "The only act, however, which has been expressly stated to be an assuming to act as a corporation is that of making the shares *transferable without any restriction at the mere will of the holder.*" He adds: "The *universal* illegality of this proceeding was doubted, as we have before observed, by Lord Ellenborough. But in *Joseph v. Preber* (3 Barn. & Cres., 639; 5 Dowl. & Ryl. 542), it was held to be universally illegal, not only, as it should seem, under the words of the statute on that particular point, but with reference to the more general offence of acting as a corporation." C. J. Best, in a subsequent case (4 Bing. 267), says: "There can be no transferable share of any stock, except the stock of corporations or of joint-stock companies created by act of Parliament."

This language is loose and confusing, and clearly shows that the minds of these distinguished jurists were far from being directed to the question whether transferability of stock is an essential property of a corporation. C. J. Best states it in sub-

stance as an unqualified proposition, that shares of stock are not transferable except by act of Parliament. With great respect, that is an error. The stock in every voluntary association, by agreement of the associates, may be transferable at the will of the owner, as has been already stated and illustrated, and daily practice confirms it.

But from whatever source the notion came that transferability of stock was an exclusive attribute of a corporation, or however well it is sustained by authority, one position respecting it is clear, and in that all the cases concur, viz., that to render the transferability of shares a corporate property, *the shares must be transferable at the mere unrestricted option of the holder*. And where the shares could not be transferred to a person who would not enter into the original covenants; and where the same person could not hold more than twenty shares; and where the transfer of shares was limited to persons residing in the neighborhood; and where a person could not become a member of a company till he had signed the partnership articles, nor until he had been approved by a certain majority of persons present at a meeting of the society—the Court of King's Bench gladly availed themselves of these circumstances to hold the associations valid under the English statute, and of course that such restricted transferability was not a corporate attribute. [Collyer, 624, 625, and cases there cited.]

There is only one clause in our General Banking Law which regulates the transfer of stock; and that, instead of permitting the shares of the associations to be transferred at the mere unrestricted option of the holder, subjects them to two statutory restrictions, and also to as many others as each association may think proper to impose. The words of the clause are, “The shares of said association shall be deemed personal property, *and shall be transferable on the books of the association, in such manner as may be agreed on in the articles of association*; and every person becoming a shareholder by such transfer shall, in proportion to his shares, *succeed to all the rights and liabilities* of prior shareholders.”

FIRST. The shares are transferable *on the books* of the association.

SECOND. The transferee succeeds, not only to the rights, but

to the *liabilities* of the prior shareholders. These are imposed by law upon him.

THIRD. The shares are transferable on the books of the association, *in such manner as may be agreed on in the articles of association*. This enables each association to impose just such restrictions as it pleases; and so obviously is the holder of stock in the associations restrained from transferring his stock at his *mere unrestricted option*, that it seems unnecessary to occupy more time with this topic.

*Examination of the Statute.*—The way now appears open to examine those parts of our General Banking Law which are supposed to confer corporate powers on the associations which it authorizes, and ascertain whether the associations have all or any of the four essential requisites of a corporation before stated.

FIRST. *Has every association a collective existence by name, created by the sovereign power, exercised directly or mediately?*

There are only parts of two sections of the statute which relate to this corporate feature, viz., the first clause of the fifteenth section, and the first and fifth subdivisions of the sixteenth section. They are,

“§ 15. Any number of persons *may associate* to establish offices of discount, deposit, and circulation,” &c.

“§ 16. Such persons, under their hands and seals, shall make a certificate which shall specify :

“1. The *name assumed* to distinguish such association, and *to be used in its dealings*.

“5. The period at which such association shall commence and terminate.”

The force and true meaning of the clause of the fifteenth section cannot be fully apprehended, without reading it in connection with the act to restrain unauthorized banking. That act is as follows :

“§ 1. No person, unauthorized by law, shall subscribe to, or become a member of, or be in any way interested in, any association, institution or company, formed, or to be formed, for the purpose of receiving deposits, making discounts, or issuing notes, or other evidences of debt to be loaned or put in circulation as money,” &c. [1 R. S. 711.]

Who can fail to see, that the object of passing this clause of

the fifteenth section of the General Banking Law, was to repeal, in effect, the first section of the Restraining Act, and open banking to the community? The Legislature evidently intended to allow any person who chose to become a member of an association to conduct the business of banking. And when they say, "any number of persons *may associate* to establish," &c., is it not a perversion of their language to insist, that they thereby call into being an indefinite number of corporations? The enactment is merely permissive. It only removes a previous legal restraint, and allows free action. It creates nothing; but allows parties to contract with each other to accomplish an object theretofore unlawful. This will appear the more evident, by comparing the language with that of our general acts of incorporation. Take, for example, the act relative to incorporations for manufacturing purposes. The first section directs, that "any five or more persons, who shall be desirous to form a company," &c., "may make, sign, and acknowledge, before a justice of the Supreme Court," &c., "a certificate in writing, in which shall be stated the corporate name of said company," &c. And the second section enacts, "that as soon as such certificate shall be filed as aforesaid, the persons who shall have signed and acknowledged the said certificate, and their successors, shall, for the term of twenty years next after the day of filing such certificate, be a body politic and corporate, in fact and in name, by the name stated in such certificate, and by that name," &c. [3 R. S. 310.]

Under this law, a corporation is brought into existence by legislative enactment. Under the General Banking Law, an association is formed by contract, by agreement of the parties. By that law, any number of persons may associate—and if they *do associate*, it is their own voluntary act; and their association derives its being from their mutual consent, and in like manner may be dissolved at their pleasure. They are allowed by agreement to fix the period of its commencement and termination, as in all other cases of voluntary associations—time of commencement and dissolution, like a strict copartnership; and if the parties are dissatisfied with each other, or the business, they may by general consent dissolve at any time before the period fixed for the termination of the association. In these respects, the associations are wholly unlike corporations. The latter always have



a period fixed by law for their commencement and termination, unless they are perpetual; and then, their perpetuity is likewise declared by law, and it is not in their power to dissolve themselves. They may commit acts which forfeit their existence, but cannot dissolve at pleasure.

Furthermore; it is understood to be the true construction of this statute, and that such construction was deliberately given to it by the late comptroller and attorney-general, after full and mature examination, to authorize any individual to conduct the business of banking according to its provisions. And it is a well-known fact, that several individuals have deposited their respective securities with the comptroller, received bills, and are now prosecuting the business of banking in their respective offices, and on their respective accounts. If this is the true construction of the act, and there appears to be no reason to doubt it, there would seem to be an end of all pretence even, that those who avail themselves of its provisions are corporators. The statute certainly does not constitute each of the individuals referred to, a corporation, or, in other words, give each of them a corporate existence.

Nor does the statute give a name to the association formed under it, as is always the case when a corporation is created; nor does it adopt any selected by the parties, as in the general act of incorporation for manufacturing purposes. The name of each association is given by agreement of the associates. They determine and agree what it shall be. It is given by contract and not by statute. It comes from the will of individuals, and not from the one sovereign power. Besides, the associations have no common name by which they are known; by which they take and give title and make contracts, and by which they sue and are sued. Nor have they two names, one by which they may take and grant, and another by which they may sue and be sued. They have only one name, and that for a single purpose, viz., "to be used in their dealings." They neither take, nor grant, nor make contracts in that name, nor do they sue, nor are they sued by it, as will be more distinctly seen when other sections of the statute are examined.

SECOND. *Has every association a standing in court, as a col-*

*lective existence by a given name or designation, with the rights and liabilities of a party litigant?*

The clauses of the statute which relate to this part of the subject are found in the twenty-first and twenty-second sections. These are as follows: "And all suits, actions and proceedings brought or prosecuted by or on behalf of such association, may be brought or prosecuted in the name of the president thereof." "All persons having demands against any such association, may maintain actions against the president thereof."

The ground taken by the counsel for the defendant is, that the suits permitted by these provisions of the statute, are to be brought and prosecuted in the name of the *office* of the president of the association, and not in the name of the person who fills the office—and that each association has, therefore, a name given to it by statute, by which it sues and is sued.

This is obviously an erroneous construction of the act. The title of this very cause is a practical evidence of the error. It is in the name of *Anson Thomas*, president, &c.; and not in the name of *The President* of the Bank of Central New York. The language of the statute shows, that the office of president is referred to as a mere description of the person in whose name the suit may be brought, and against whom it may be maintained. The words are, "all suits," &c., "may be brought or prosecuted *in the name of* the president thereof," and not in the name of the *office* of president thereof. So, "all persons," &c., "may maintain actions against *the president* thereof," and not against *the office* of president thereof. But there are other clauses in these same two sections of the statute which are conclusive of its construction.

If the suits may be brought in the name of the office of president, or maintained against the office of president, then no suit, brought in the name of that office, or against it, would abate by the death, resignation, or removal of the officer. But in the twenty-first section, the Legislature provides that no "suit, action, or proceeding," "brought or prosecuted in the name of the president thereof," "shall abate by reason of the death, resignation, or removal from office of *such president*, but may be continued and prosecuted according to such rules as the courts of law and equity may direct, *in the name of his successor in office.*"

So, also, in regard to suits against the president, the twenty-second section contains the following provision: "Which suits or actions shall not abate by reason of the death, resignation, or removal from office of *such president*, but may be continued and prosecuted to judgment against *his successor*."

After reading these provisions, argument surely is unnecessary to show, that the suits are to be brought in the name of and against the person holding the office of president; and that the office is used in the statute merely as a description of the person.

Another consideration arises in this connection, and that is, that when a president, who is either plaintiff or defendant, dies, the suit, though not abated, is suspended, until a successor is appointed; and when so appointed, the suit does not proceed, of course, against him without any proceeding in court, but "according to such rules as the courts of law and equity may direct." Which proceeding would naturally be, a suggestion on the record of the death of the president in whose name the suit was pending, and the appointment of his successor, and an order thereon, that the suit proceed in the name of the successor.

How unlike is all this to a corporation! A corporation never dies; that is, if not perpetual, it lives out its known and appointed day. It has, as we have already seen, a *continued existence*, or, in other words, a *continued succession*. A suit in its name never abates; for it never dies, resigns, or removes. What sort of a corporation, therefore, must that be which has not a *continued existence* by name, so as to have a continued standing in court?

*But again:* The statute in respect to suits brought in the name of or against the president, is only permissive. The language is, "all suits," &c., "*may* be brought," &c.; "all persons," &c., "*may* maintain actions," &c.

Hence, any association or individual who is banking under the law may sue, the former in the name of the association, and the latter in his own name. In like manner, any creditor of any such association or individual may sue the associates or individual. Either course would undoubtedly be attended with great difficulties in respect to parties, when such a suit should be attempted in favor of or against the members of an association,

and probably would be impracticable for any useful end; but still the right so to sue remains.

Here, it may be said, how *entirely* unlike a corporation! There is not even an approach to an analogy. A right to sue in the name of the individual members of the company is an exclusive attribute of a voluntary association; it has not the most distant resemblance to a corporate power.

A suggestion was made by the counsel for the defendant, in the course of his argument, that the statutory provision in the twenty-second section, that "all judgments and decrees obtained or rendered against such president for any debt and liability of such association," shall be enforced only against the joint property of the association, was analogous to the legal effect of a judgment against a corporation. And so it is. But what of that. Many rights and liabilities of voluntary associations are analogous to those of corporations. The question is, whether it is a peculiar feature of a corporation. If it is, then several other statutory provisions in regard to judgments upon joint liabilities, may be said to have the same effect.

Our statute declares that on the arrest of one of several joint debtors, a judgment may be rendered against all, and enforced against the joint property of all. (2 R. S. 377.) The statutory regulation of suits by and against a limited partnership is, that "suits in relation to the business of the partnership may be brought and conducted by and against the general partners in the same manner as if there were no special partners." (1 R. S. 766, § 14.) The effect of the judgment, of course, is to bind the copartnership property. This legislative enactment respecting suits by and against limited partnerships, is very similar in form, and cannot be distinguished in substance from that respecting suits by and against the banking associations; and yet I apprehend that no one ever seriously thought a limited partnership had anything in common with a corporation, except perhaps that in chancery the general partners, as lately held by the Chancellor, and the directors of a corporation, are responsible as trustees of their respective common funds. But such responsibility is far too general to be called a peculiar corporate attribute.

THIRD. *Has every association power to take and convey title to*

*property, acquire and give rights as a collective existence, and by its given name or designation?*

The parts of the statute supposed to be applicable to this feature of a corporation are in the twenty-fourth section. That section, after specifying the purposes for which an association may purchase, hold, and convey real estate, enacts: "And all conveyances of such real estate shall be made to the president, or such other officer as shall be indicated for that purpose in the articles of association, and which president or officer, and his successors, from time to time may sell, assign, and convey the same," &c.

On comparing this provision of the statute with what has been said concerning and in illustration of this third corporate feature, the wide difference will be seen between a corporation's taking and granting by its corporate name, and taking and granting in the manner directed by this act.

There is no room to doubt but that every conveyance is to be made to the *person* who fills the office of president, or to some other person who holds some other office in the association. The associates of each association have, therefore, a right of selecting a trustee of their real property from the whole body of their agents, from their president down to their porter. The legislature has not even designated the trustee. They have only said, If you select none for yourselves, then we will select for you, your president; but as we allow you to elect your president and other officers, we give you unrestricted choice. The right of selection, therefore, is uncontrolled, and is as full as the right of the members of any voluntary association to select a trustee for themselves, to take the title to their real property for their benefit.

It appears to be so clear that the associations do not take or grant real estate by their collective name, if they can be considered as having one for any purpose, that it seems unnecessary to spend more time with this branch of the argument.

The next question is, Where is the title to the personal property of the associations? The answer is obvious. The statute having made no provision on the subject, it is where the common law places it, viz., in the members of the respective associations, and subject to such custody, control, and management as they have designated and agreed to in their respective articles of asso-



ciation. And this shows that the right still belonging to the associations, to sue in the names of their members, is no shadow, but a practical reality.

The vesting of the title of the real property of the associations in a trustee, who is always selected by themselves, and of their title to their personal property in the members of the associations, shows how impossible it is to hold them to be corporations.

FOURTH AND LAST. *Has every association power conferred by the statute to make by-laws, or, in other words, to prescribe rules of action for persons without their consent?*

The only expression in the statute which, by the greatest stretch of imagination, can be said to have any relation to this power, is found in the eighteenth section; that section gives and prescribes the power of the associations, and states it to be "to carry on the business of banking by discounting bills," &c., "*in the manner specified in their articles of association* for the purpose authorized by this act."

On this part of the subject it seems sufficient to say, that whatever authority is given to the associations by these words of the act, such authority is merely *permissive*, and that, whatever regulations or rules it authorizes the associations to make, such regulations and rules are to be specified in their articles of association, and of course are purely matters of contract, and derive their whole force and authority from the consent of the parties to be bound by them.

This, as we have seen, is a feature peculiar to the by-laws of voluntary associations, and distinguishes them from corporations. The by-laws of the latter, deriving their force from the statute, and emanating from the sovereign power, bind those subject to them without their consent; while those of the former, deriving their force from consent, and emanating from contract, only bind those subject to them with their consent. The very terms employed show the difference between incorporated and unincorporated companies, and terms are no unimportant indication of thought. The former is a corporation, the latter a *voluntary* association; the former exists by force of a statute; the latter by force of a *contract*; and so their respective by-laws: one binds by *contract*, and the other by *statute*.

In concluding this analysis and examination of the statute,

one remark seems to be required in regard to these associations having, in different forms, several of the general powers of corporations. It is true that they have, and so have all citizens of full age, all voluntary associations, and every being who has and exercises legal rights and prosecutes judicial remedies.

Franchises are rights which can only emanate from the sovereign power, and are generally granted to corporations, but often to individuals and companies not incorporated; and the legislature oftentimes confers the privilege of possessing and enjoying property, and exercising rights, upon persons and associations not otherwise allowed by law—and such privilege is also generally conferred in the form of an act of incorporation: hence, at an early day the idea was suggested that these were incidents to corporations; but they are not peculiar to them, and so it has been decided in England. Lord Holt, in the case of *The King vs. The City of London* (Skinner's Rep. 310), held that neither "the actual possession of property nor the actual enjoyment of franchises are of the essence of a corporation;" and this position has received the sanction of Chancellor Kent in his valuable Commentaries. [2 K. C. 277, 2d ed.]

Had these associations been authorized in the very form they now are, but to carry on some other business than banking, hitherto conducted in this state solely by corporations, it probably would never have entered into the mind of any man to think they were corporations, or even like such bodies, though his ingenuity may have been on the rack for some plausible ground for a dilatory defence to a just demand.

The statute must be considered as a modified repeal of the Restraining Act, and in thus repealing it, the Legislature have thought proper, and for the very best reasons and most laudable motives, to protect the community from injury, while they restored to every citizen his unquestioned right to use his funds for banking purposes. In doing this, the Legislature thought it judicious to require from the associations full semi-annual statements of their affairs (Section 26 of the act), as the law then and still requires like annual statements from the incorporated banks of this state (1 R. S. 593, § 19, 20; 3 R. S. 287, § 31), to keep a certain amount of specie on hand (§ 33 of the act), and other like regulations for the public security; and these have been alluded

to by the counsel for the defence as showing that the associations are corporations. With equal soundness and cogency might he argue, that because a corporation can maintain a suit by its corporate name, and an individual can maintain one by his name, therefore a corporation is an individual.

One proposition is self-evident, and although alluded to heretofore, should be distinctly stated in this place, and that is: If these associations are corporations by reason of possessing their essential requisites, they must have *all* those requisites, whatever they are—or, in other words, must have the essence of corporations. If there are four *essential* requisites and they have but three, or there are three and they have but two, or there are two and they have but one, they cannot be corporations.

On the whole, we insist that these associations, judged of solely by the power and attributes given to them by the statute, do not possess the essential requisites of corporations, and of course are not for that reason corporations.

It is admitted, as has already been stated, that they are not so by explicit legislative enactment; and as corporations can only be created in one or the other of these modes, the argument seems conclusive.

But there is yet another and controlling argument against these associations being adjudged corporations, and that is derived from the manifest intention of the Legislature.

*Intention of the Legislature.*—The first evidence of that consists in not only the entire omission of the Legislature to declare, by direct and explicit enactment, that the associations shall be corporations, as they have done in every case, without exception, where corporations have been created by special or general acts; but in their caution, manifested throughout the whole statute, to avoid every expression which might countenance such an idea. No person can read this statute and hesitate for a moment in saying that the Legislature never intended to constitute these associations corporations. If they had, how obvious the course! They had only to adopt the forms of some of our other general acts of incorporation; but, instead of that, they have studiously avoided all of them. There is a single provision in the law which, of itself, is decisive of the intention of the Legislature. I allude to the clause in the nineteenth section, that no association shall “be

dissolved by the death or insanity of any of the shareholders therein." Why such a provision, if these associations were thought or intended to be corporations? But if voluntary associations, then it was pertinent and proper, and like similar provisions often introduced into articles of copartnership and joint-stock companies, where there are numerous members, and consequently frequent deaths.

*History of the Statute.*—The history of the origin, progress, and final passage of the statute also shows, with unvarying light, the intention of the Legislature.

It may not be time misspent to give a pretty full account of this important statute, which already exercises a great, and must hereafter a far greater, influence on the business, morals, and destiny of this state. By reason of my professional connection with one of the principal institutions organized under it on a cash capital, and the very first of that character which was organized in the state,\* I have bestowed great attention on this law, and feel an unwavering assurance, vastly increased by the argument of this cause, that it will confer unnumbered blessings, not only on the people of this state, but on the whole country; that it will form an era in our legislation and business which will be remembered and felt for good as long as the institutions of the country shall stand. It has already destroyed banking monopoly and purified our legislative halls—of themselves a sufficient eulogy—but it furnishes the people a safe and convenient currency; opens the business of banking to fair competition; encourages industry, commerce, and the mechanic arts, and holds them in steady courses. I must not, however, dwell on these topics, pleasing and full of hope and cheering anticipation as they are.

The project of a general banking law was first brought fully to the attention of the Legislature in 1837. During the session of that year, numerous petitions were presented from different parts of the state praying for such a law.

Mr. Cutting,† a member of the assembly that year from the

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\* I allude to "The American Exchange Bank," established in the city of New York, the project of which was formed and presented to the public by the Board of Trade of that city.

† Francis B. Cutting, Esq., a member of the bar in the city of New York.

city of New York, has the honor of introducing the first bill for legislative action on this important subject. On the 11th February, 1837, he gave notice of his intention, on some future day, to ask leave to bring in a bill "to amend the act relating to limited partnerships," and accordingly, on the 23d of that month, he introduced a bill, on leave, entitled "An act in relation to limited partnerships, and to authorize assignable interests therein." I have not seen this bill as introduced by Mr. Cutting, but there is no doubt it was a bill, in substance, to authorize the business of banking. On the same day, and after Mr. Cutting had introduced his bill, and after it had been read the first and second time, the assembly directed their "committee on the incorporation and alteration of the charters of banking and insurance companies, as soon as practicable, to report, for the action of the house, a general bank law." On the 3d of March following, Mr. Robinson, from that committee, reported a bill, entitled "An act to authorize associations for the purposes of banking." These two bills were referred together to a committee of the whole on the 14th of that month. They were often before that committee until the 22d of that month, when the committee, not having acted definitively on the bill introduced by Mr. Robinson, reported on that introduced by Mr. Cutting that they had amended and agreed to it. The house accepted this report by a vote of sixty-five to forty-one, and ordered the bill engrossed. It came up for a third reading and was read the third time the next day, when a motion was made to lay it on the table, which was carried by a vote of sixty-six to forty-three. On the 6th of April following, the committee of the whole again took up the bill introduced by Mr. Robinson, and after having had it before them on several different days, reported to the house, on the 11th of that month, that they had amended and agreed to it. The report was laid on the table. On the 13th this bill was referred to the attorney-general, "with instructions to report his opinion as to the constitutionality of the provisions

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Although Mr. C. is yet classed with the junior members of his profession, he is rapidly advancing in usefulness and reputation, and must soon enjoy the highest honors of the bar. He is already intrusted with the management of causes of the greatest importance, which he always conducts with distinguished ability.



thereof; and also whether, in his opinion, the passage of the said bill requires the assent of two-thirds of the members elected to each branch of the Legislature to pass the same; and if, in his opinion, any of the provisions of the bill are unconstitutional, that he specify in what respect particularly." On the following day the bill introduced by Mr. Cutting was also referred to the attorney-general, with substantially the same instructions. He reported upon both bills four days afterwards, viz., on the 18th of April. His opinion on the bill "to authorize associations for the purpose of banking" is more full than on the other, as in that he states at large his reasons for his opinion on both. That opinion was, that both bills were unconstitutional, and that each required a two-thirds vote to pass it. I shall hereafter examine fully the principles and reasons of his opinion on these bills; but at present it is sufficient to state the facts, and his conclusions upon them.

In his opinion on the bill first referred to him, he says:

"The bill referred to the attorney-general declares that associations for banking may be formed by twenty or more persons, 'with the rights and powers, and subject to the conditions and liabilities,' in said bill prescribed. (§ 1.) The capital stock of the association is to be divided into shares, and which shares are to be personal property. (§ 3, 31.) It shall continue for twenty-five years, and 'be composed of persons who shall from time to time be stockholders.' (§ 4.) It shall not be 'dissolved by the death or act of any stockholder.' (§ 31.) Its concerns are to be conducted by directors, and to whom the capital stock is to be paid.' (§ 2, 8.) The 'association shall have power to carry on the business of banking' in all its branches, including 'the issuing of bills, notes, and other evidences of debt, and may exercise such other incidental powers as shall be necessary to carry on such business. It may make by-laws for the management of its property, the regulation of its affairs, and for the transfer of its stock.' (§ 11.) It may purchase, hold, and convey real estate for particular purposes, and under particular circumstances; but not 'in any other case or for any other purpose.' (§ 12.) It shall take a name, and by which it must contract; but it must sue and be sued in the name of the office of president of the association, 'without naming the individual.' Suits by and against the 'company' are to be prosecuted 'in the same manner and with the like effect as suits and proceedings by and against corporations,' and judgments and decrees therein shall be executed in the same manner. (§ 3, 14.) Officers and stockholders shall be liable and answerable in the same cases, to the same extent, and in like manner, as the officers and stockholders of incorporated banks created since the year 1828. (§ 15.) The obligations and contracts of the association 'shall

be obligatory on the association, and be assignable and negotiable in like manner as if made or issued by a private person,' (§ 17.) These associations are declared to be subject to the provisions of the safety fund law of 1829, and to all general laws in force in relation to incorporated banks. (§ 27, 1, 37.) Their capital is to be taxed like that of incorporated banks, and the stockholders are in like manner exempt from taxation. (§ 34.)

"The bill was manifestly designed to confer on banking associations which may be organized under its provisions, every essential attribute of a corporation.

"Every such association is to have succession by the name it takes for twenty-five years. It 'shall be composed of the persons who shall, *from time to time*, be stockholders in the same.'

"It may sue and be sued, complain and defend, *in the name* of the office of president of the association.

"It may hold personal property, and also hold and convey certain real estate, *in the name* it assumes.

"It may appoint subordinate officers and agents to transact the business of the association.

"It may make by-laws for the management of its property and the regulation of its affairs.

"It may enter into contracts, incur debts, and carry on the business of banking in all its branches.

"It is taxable like a moneyed corporation.

"An artificial legal person is thus created. As a person, it has the ordinary rights of property. It may enter into contracts, prosecute and defend suits, and do all other things contemplated by the bill, as a natural person may.

"Title to property and rights of action can vest only in natural or artificial persons: there is no intermediate state or condition in which they can exist. An unincorporated association has none of the attributes or capacities of a legal being; it cannot sue; as an organized assemblage it is unknown to the law. The individuals of which it is composed have rights, but the association, as such, has none." [Assembly Doc. 1637: No. 303, pp. 5, 6, 7.]

His conclusions were:

"1. That the associations which this bill assumes to authorize would be bodies corporate;

"2. That as it thus assumes to create corporations, it requires the assent of two-thirds of the members elected to its passage;

"3. That the bill is unconstitutional, as it assumes to authorize the creation of an indefinite and unlimited number of bodies corporate, and should it pass into a statute, and associations be formed under it, they would, for the purposes contemplated, be absolutely null and void." [Ib. p. 9.]

Mr. Beardsley's opinion on the other bill is more brief. He barely states the contents of the bill in detail, shows what they are, as he understands them; and then his two conclusions, as follows:

"1. That such partnerships as are contemplated by the bill would be bodies corporate, and that the assent of two-thirds of all the members elected is requisite to the passage of a bill for their creation.

"2. As the bill assumes to provide for the creation of an unlimited and indefinite number of these corporations at the mere pleasure of individuals, it is for that reason unauthorized by and in derogation of the constitution." [Ib. Doc. No. 304, p. 7.]

On the 25th of April the assembly, on motion of Mr. Robinson, "Resolved, that the General Banking Law, together with the opinion of the attorney-general thereon, be referred to a select committee to consider and report thereon." Messrs. Robinson, Clinch, and Patterson, were the committee.

On the 29th of April, that committee, by Mr. Robinson, reported:

"That they have carefully examined the different sections of the bill under consideration, and compared its several provisions with the constitutional objections raised by the attorney-general; and have made such amendments thereto as, in their opinion, deprives the bill of those attributes which, in the view of the attorney-general, would require the assent of two-thirds of the members elected to its passage. Your committee are also of opinion that the bill, as now amended, will not conflict in any other particular with the ninth section of the seventh article of the constitution as construed by the attorney-general.

"Your committee have not deemed it a necessary part of their duty to investigate the validity of the objections raised by the attorney-general to the bill on which his opinion was required; they therefore do not report any conclusion thereupon.

"The bill, as amended by your committee, is herewith presented, and this report respectfully submitted." [Ib. Doc. No. 318.]

This report was unanimous, having been signed by all the committee.

Two days afterwards, viz., on the first day of May, the house went into committee of the whole on the bill, amended it as recommended by the committee, and agreed to it; and the report of the committee was accepted by a vote of forty-nine to twenty-

six, and the bill ordered to be engrossed. It was read the third time the next day, and referred to the committee on two-thirds bills to consider and report upon it. That committee reported the day following that, in their opinion, it was not a two-thirds bill, and it was ordered to a third reading, passed, and sent to the senate.

Some very early movements of a general character were made in the senate in 1837 on the subject of a general banking law.

On the 20th of January, Mr. Loomis, a senator from the seventh district, offered a resolution, "That the committee of the whole be discharged from the further consideration of the petition praying for the passage of a law authorizing a general system of banking within this state, and that the said petition be referred to a select committee, to consist of one senator from each senate district, with instructions to report a bill for that purpose." On the same day, Mr. Dickinson, a senator from the sixth district, offered a resolution, "That the committee on banks and insurance companies be instructed to inquire into the expediency of passing a general banking law," to contain certain principles and provisions, which were specified in the resolution, of rather an ultra character. This resolution was laid on the table, and does not appear to have been called up afterwards.

On the 27th of January the senate took up the resolution offered by Mr. Loomis, passed it, after striking out the instructions, and appointed a committee under it, consisting of Mr. Loomis, Mr. Young, from the fourth district; Mr. Huntington, from the sixth; Mr. Tracy, from the eighth; Mr. Sterling, from the fifth; Mr. Livingston, from the first; Mr. Johnson, from the third; and Mr. Van Dyck, from the second.

This committee reported by Mr. Young, on the 18th of April following; at which time the assembly were engaged almost daily upon the two bills before it, on the same subject. The report is full on the whole subject of banking, and shows that the committee had given it great attention. With their report the committee presented a bill "to authorize associations for the purposes of banking."

A few extracts from this able report will exhibit the views of the friends of the measure in the Senate.

"The committee feel themselves called upon, under the reference which has been made to them, to allude to the origin of the present system of bank corporations, and to point out some of the most prominent evils which are necessarily connected with the monopoly character of those institutions.

"These evils have been experienced by the community for many years; and the time seems to have arrived, when it is proper to devise, if possible, a system which is more free and more equal in its operation; and which, unshackled by useless restraints and unprotected by chartered privileges, shall permit the flow of a circulating medium through all parts of the state, as the exigencies of trade and the pulsations of business require. [Sen. Doc. No. 55, 1837, p. 1.]

"But, however onerous the exactions which monopolies ever impose, there are other objections to the system of a more formidable character, some of which are inseparable from it, and put all palliation at defiance. The provision in the constitution requiring two-thirds for the passage of a bill creating a corporation, adds to the difficulty of procuring a charter. This difficulty can be obviated only by securing in both houses the requisite number of votes. Applicants for bank charters are thus induced to ascertain all the projects that are pending, to cultivate an alliance with each other, and to make themselves acquainted, if possible, with every member who is charged with any favorite topic of legislation. A reciprocation of mutual aid is the necessary consequence. A league of interest is thus formed, strengthened and cemented by the most mercenary motives; and the inmates of the temple of legislation are thus converted into vile 'money-changers.' [Ib. p. 3.]

"Like the leprosy, the monopoly system, from a single spot, has increased and spread itself over the whole body politic. There are now in operation in this state, one hundred banks, including two branches, with which no citizen, or association of citizens, is allowed by our laws to compete. [Ib. p. 6.]

"The system of joint-stock banking by private associations has been successfully conducted in Scotland, on a scale regulated alone by competition, and by demand and supply, for more than one hundred years, without a single failure in the whole of that period up to the present time." [Ib. p. 13.]

Speaking of the evils of an inflated currency, the committee propose, as one remedy for them, "subjecting the issue of such bank paper as is authorized by law, to full, free, and open competition."

"On this second topic," say the committee, "which is the only one with which the committee are specially charged, they earnestly recommend the organization of a system of private banking associations, which shall be wholly unconnected with each other, so that they may freely compete



among themselves, as well as with the existing bank corporations. [Ib. p. 18.]

“The committee have prepared a bill, combining in a detailed form the foregoing suggestions, which their chairman will ask leave to introduce.” [Ib. p. 20.]

An effort was made by Mr. Young for the senate to take up this bill on the 27th of March; but it failed by a vote of twenty to eight. It was occasionally before the senate, in committee of the whole, during the month of April, and, as I understand, was fully discussed; but on the 5th of May, the senate rejected it by a vote of fifteen to ten; and on the same day, rejected the bill from the assembly, by a vote of sixteen to nine.

Thus the measure was defeated for the present, though it numbered among its real friends, many of the most intelligent and influential members of the Legislature, and was loudly and generally called for by the people.

Their voice was at last not only heard, but regarded; and the measure appeared before the Legislature of 1838 in a more imposing form. Gov. Marey recommended it explicitly and earnestly, in his message of that year, to the Legislature.

Before I proceed, however, to the occurrences of 1838, let me call attention to the particular matter now in hand, viz., the intention of the Legislature in respect to creating *corporations*, to carry out this measure of general banking.

The report of the committee of the senate clearly exhibits the views of that branch of the Legislature on this subject. Instead of increasing corporations, it is obvious that one of the leading motives, if not *the* leading one, of the friends of the measure in that house, was to curtail, restrain, and regulate the banking corporations already existing, and prevent the creation of any more.

The assembly had evidently framed both their bills in such form as, in their opinion, would not render them obnoxious to the charge that they were bills to create corporations; and the attorney-general, to whom they were referred, is obliged to resort to a close argument, particularly in respect to the bill introduced by Mr. Cutting, to prove that the associations which they authorized were in fact corporations, though not declared to be so by the bills. Instead of passing the bill “to authorize

associations for the purposes of banking," which, it appears, at last they preferred, of the two, the assembly sent it to a special committee, amended it so as to remove the grounds of the attorney-general's objections, and passed it, under a report from their standing committee on two-thirds bills, that it was not one of that class. From these facts, the inference is irresistible, that the assembly intended the very opposite of creating corporations to conduct the business of banking.

In this aspect the measure was presented to the mind of Governor Marcy, when preparing his message for 1838; and he expresses his views on the whole subject. As his message will be frequently referred to in the course of the argument, I will here give all he says on the subject:

"While the Legislature has been engaged in giving to these institutions the attributes of permanency and usefulness, an increasing unfriendliness has been exhibited towards them principally on account of their exclusive privileges. Monopolies are undoubtedly incompatible with the equality of civil rights, which it is the great object of a free government to secure to all its citizens. Although the banks of this state are not strictly monopolies, yet they possess privileges withheld from individuals, and in consequence thereof have hitherto shared, and will probably continue to share, in the odiousness with which monopolies are justly regarded. To obviate this objection, it is desirable to discontinue the present mode of granting charters, and to open the business of banking to a full and free competition, under such general restrictions and regulations as are necessary to insure to the public at large a sound currency. This can be done, either by passing a general banking law, or by an entire repeal of the restraining act. Doubts have been entertained as to the constitutional competency of the Legislature to pass a General Banking Law, conferring corporate powers. Without entering into the argument on this question, I will only say, that I am inclined to the opinion that the Legislature have the power to pass such a law; but the spirit of the constitution requires that it should be passed as a two-thirds bill. It is proper that I should also say, that this opinion is entertained with much diffidence, and is not expressed without duly considering the respectful deference justly due to the high authority by which it is opposed. If, however, you should conclude that the constitution interposes an insurmountable obstacle to the passage of such an act, then it is suggested that you should regulate and limit, by a general law, partnerships which may be formed to conduct the business of banking, in such a manner as to secure to them the essential advantages now conferred by special charters, and subject them to such restrictions and regulations as the public good may require.

"In recommending to the last Legislature a repeal of the restraining law,

I felt it to be my duty to urge them to retain that part of it which prohibits the issue of notes or other evidences of debt to be put in circulation as money. The objections I then entertained to an unqualified repeal still have great force with me. I fear the injurious consequences to our currency that would result from granting to individuals and associations the unrestrained license to issue paper, and put into common use as a circulating medium; but if this permission could be made to depend on an ample fund to be provided for the redemption of the paper which might be put in circulation—if the issues could be graduated by the amount of this fund; and if it could be certainly and immediately available whenever required for the purpose of redemption, the objections to an unqualified repeal of the restraining law would be removed.” [Assembly Doc. 1838, No. 2, pp. 7, 8.]

Here is presented for the first, so far as I have observed, the valuable feature of our General Banking Law, which provides a safe and ample fund to secure the currency which it authorizes. With this addition, the plan recommended by the Governor is the same, substantially, as the one adopted by the assembly the year before.

The senate this year originated no bill on the subject, but awaited the action of the other house. All they did, till a late day in the session, was to appoint a committee on this part of the Governor’s message, which consisted of Mr. Young, Mr. Willes, and Mr. Laey.

The assembly took up the measure in earnest and with spirit. They appointed a committee of five, as early as the 6th of January, on so much of the Governor’s message as related to the *restraining laws and a general banking law*, consisting of Mr. J. Miller, Mr. G. W. Patterson, Mr. Bostwick, Mr. Nellis, and Mr. Wallace.\*

Mr. Patterson, from this committee, reported on the 3d February, and presented a bill “To authorize associations to carry on the business of banking.” The committee disclaim an intention to discuss at large the subject of currency and banking, but give, in a brief report filled with good sense, the principal reasons in favor of the bill. A few extracts will suffice :

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\* Mr. Jedediah Miller, of Schoharie; George W. Patterson, of Livingston; William F. Bostwick, of Madison; Jeremiah Nellis, of Montgomery and Hamilton; and James Wallace, of Rensselaer.

"The system of banking, as at present established in this state under the provisions of the safety-fund law, is considered by many as a *monopoly*, and as such, has become odious to a large class of our fellow-citizens;" \* \* \* "it cannot be denied that a privilege is enjoyed by the few which the great body of the people do not, and, under the existing laws, cannot enjoy." "By throwing open the business of banking to all who will give the bill-holder the necessary security, the jealousies now existing will, in a great measure, be overcome, and capitalists will seek investment for their capital where it can be most profitably employed; and thus the business of banking will be rendered secure to the public, and the competition sufficient to afford to the borrower all the accommodations he can reasonably desire."

"The committee are well aware of the objections urged by the attorney-general against the constitutionality of a bill for a general banking law that was before the last House of Assembly; but the committee, without attempting to decide whether the opinion of the attorney-general was well founded or otherwise, know that many eminent individuals of the legal profession are clearly of opinion that the bill above referred to was constitutional, and might have become a law with the assent of a majority of the Legislature. Still, in preparing a bill for the consideration of the house, the committee have studiously avoided everything that would constitute associations to be formed under its provisions, *corporations*, and they therefore think the constitutional objection cannot, with any propriety, be raised." [Assembly Doc. 1838, No. 122, p. 3.]

The assembly took up this bill, in committee of the whole, on the 14th of February, and were engaged almost daily upon it until the 28th of that month, when, on motion of Mr. Ogden, the committee of the whole were discharged from the bill, and it was referred to a select committee of nine. That committee consisted of Mr. G. W. Patterson, Mr. Ogden, Mr. J. Miller, Mr. Barnard, Mr. Ruggles, Mr. Mann, Mr. Hurd, Mr. Culver, and Mr. Hoard.\*

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\* This was, in many respects, a remarkable committee. Mr. Patterson and Mr. Miller were on the committee who reported the bill. The other gentlemen were Mr. David B. Ogden, of the city of New York; Daniel D. Barnard, of the city of Albany; Samuel B. Ruggles, of the city of New York; Abijah Mann, jun., of Herkimer; Davis Hurd, of Niagara; Erastus D. Culver, of Washington; and Charles B. Hoard, of Jefferson.

Mr. PATTERSON, the chairman, had already distinguished himself as a friend of the measure. He was in the assembly the year before, as we have seen, and one of the select committee to whom was referred the bill of that year, with the opinion of the attorney-general thereon. He aided in stripping it of all corporate attributes. He read, and doubtless wrote, the sensible

A committee could scarcely have been formed, with the whole state to select from, better qualified and assorted for the duty assigned them.

On the 10th of March following, the committee reported, by

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report of 1838, from which extracts have been given. A mechanic by trade, he is self-educated and the builder of his own fortune. Although hardly yet, I should suppose, in middle age, he is the speaker of the assembly for the present year, and lately was selected from a body of four hundred of the most respectable citizens of this state to preside over their deliberations, in a convention held at Ithaca to promote the construction of the New York and Erie Railroad. He is a striking instance of the fostering influence of our institutions, in elevating to distinction and usefulness natural talents and worth. It is to be hoped that the public will continue to enjoy the benefit of his services.

DAVID B. OGDEN, who moved the appointment of this committee, and of course, by parliamentary etiquette, entitled to be its chairman, I venture to say, from my knowledge of the generosity of his nature, though I know nothing of the fact, gave way, and requested that Mr. Patterson should fill that place. A note like this, were the time and occasion proper, could not even approach a just notice of the character of this truly distinguished gentleman.

He is well known, not only in this state, but the United States. He has for many years stood near, if not at the very head, of the bar of this state, and in the very first rank of the bar of the United States. His practice has been principally in the Supreme Court of the U. S. for several years, and he is the only member of our bar who attends regularly the sessions of that court at Washington. His professional engagements have directed his attention particularly to constitutional questions, and he may justly be considered the *constitutional lawyer* of this state. Of all the men in the state who could have been selected for the revision and construction of such a bill as our General Banking Law, none could have been found better qualified than Mr. Ogden. It was most fortunate that we had his services that year in our Legislature. He approved of the statute, and it has, consequently, the full sanction of his deliberate judgment.

DANIEL D. BARNARD. This gentleman is also well known in this state by several forensic efforts, of great beauty and power, in our higher courts, and by numerous literary addresses and other classical publications, which display ripe scholarship and a highly cultivated taste.

Mr. Barnard is also distinguished for his political services and papers. He was a representative in Congress from this state some years since, and is also a representative in the present Congress, of the district in which he resides. The assembly of 1838 committed the important subject of the surplus revenue and public instruction to a select committee of which he



their chairman, that they had gone through the bill, amended, and agreed to it. It was then committed to the committee of the whole, and restored to its former place in the order of business. Four days afterwards the committee of the whole took it up, and were engaged nearly every day upon it until the 3d of April following, when they reported to the house that they had gone through the bill, amended it, altered its title to "An act to authorize the business of banking" (the one it now bears), and

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was chairman, and during the session received from him a report which was universally admired, and greatly added to the high reputation he already enjoyed for correct scholarship and liberal and enlightened views on the subject of education. He took an active part in all the debates in the assembly on the General Banking Law.

SAMUEL B. RUGGLES. Few gentlemen of Mr. Ruggles' age have a higher reputation, or enjoy more fully the public confidence. His report on the financial resources of this state, made to the assembly of 1838, as chairman of their committee of ways and means, has deservedly given him an enviable fame in this country and Europe. He is now one of our canal commissioners, and has charge of one of our most difficult and important public works. Though several years short of the full maturity of middle age, it was delightful to observe the general satisfaction which was expressed on his appointment to his present office. That appointment was singularly honorable to him. He supplied the place left vacant by the death of the Hon. Stephen Van Rensselaer. And this honor was not the humiliating and hard-earned reward of political management, but the spontaneous offering of a grateful community.

He was an ardent and persevering friend of the General Banking Law, and he and his friends have taken large pecuniary interests in several of the associations, but principally in the Bank of Commerce. His views of banking and finance are admitted to be enlarged and sound, and to him the public are greatly indebted for the liberal and enlightened provisions of that statute.

Mr. R. is, besides, a well-educated and good lawyer. Though not distinguished as an advocate, he deservedly commanded a large practice while engaged in his profession. His professional opinions were always treated with great respect, and received their full share of confidence. This state has good right to expect valuable services from such an officer.

ABIJAH MANN, Jr. There is not, probably, a gentleman in this state more familiar with our legislation than Mr. Mann. He has been many years in the assembly, and once certainly, if not oftener, a representative in Congress. He has enjoyed the confidence of his political friends for a long time, and received many evidences of their approbation.

agreed to it. The house then took up the bill by sections, and adopted them separately, after amending two or three of them, and at last approved the whole bill by a vote of seventy-nine to twenty-two, and ordered it engrossed for a third reading. On the 5th of April it came from the committee on engrossed bills, and was passed by a vote of eighty-six to twenty-nine, and sent to the senate.

As the assembly of 1838 is admitted by all to have possessed an unusual amount of talent and moral worth, and especially of juridical talent, it seems proper that this court should know what gentlemen in that house, and particularly the profession, gave their sanction under oath to this bill. They were the following:

Edmund Raynsford, *Albany*.  
 Seth H. Pratt, *Allegany*.  
 Samuel Russell, *do*.  
 James Stoddard, *Broome*.  
 Isaac S. Miller, *Cayuga*.  
 Henry R. Filley, *do*.  
 Nathan G. Morgan, *do*.  
 Abner Lewis, *Chautauque*.  
 George A. French, *do*.  
 Thomas I. Allen, *do*.  
 Hiram White, *Chemung*.  
 Henry Balcom, *Chenango*.  
 Justus Parce, *do*.  
 William H. Toby, *Columbia*.  
 William A. Dean, *do*.  
 Abraham Bain, *do*.  
 John Osgood, *Cortland*.  
 David Matthews, *do*.  
 Cornelius Dubois, *Dutchess*.  
 Lewis F. Allen, *Erie*.  
 Cyrenus Wilbur, *do*.  
 Asa Warren, *do*.  
 Gideon Hammond, *Essex*.  
 Luther Bradish, *Franklin*.  
 John Head, *Genesee*.  
 Andrew H. Green, *do*.  
 Thomas B. Cooke, *Green*.  
 Peter Hubbell, *do*.  
 Daniel Wardwell, *Jefferson*.  
 Benj. D. Silliman, *Kings*.  
 Cornelius Bergen, *do*.  
 Geo. W. Patterson, *Livingston*.  
 William Scott, *do*.  
 William F. Bostwick, *Madison*.

Onesimus Mead, *Madison*.  
 William Lord, *do*.  
 John P. Patterson, *Monroe*.  
 Ezra Sheldon, jun., *do*.  
 Marcellus Weston, { *Montgomery*  
                                   { & *Hamilton*.  
 Abraham V. Putman, *do*.  
 Jeremiah Nellis, *do*.  
 David B. Ogden, *New York*.  
 John I. Labagh, *do*.  
 Adoniram Chandler, *do*.  
 Willis Hall, *do*.  
 Alfred Carhart, *do*.  
 John B. Scoles, *do*.  
 Garret H. Stryker, *do*.  
 Evan Griffith, *do*.  
 Heman W. Childs, *do*.  
 Anson Willis, *do*.  
 Samuel B. Ruggles, *do*.  
 David Hurd, *Niagara*.  
 Peter B. Porter, jun., *do*.  
 Russell Fuller, *Oneida*.  
 Fortune C. White, *do*.  
 Henry Hearsey, *do*.  
 Phares Gould, *Onondaga*.  
 James R. Lawrence, *do*.  
 Azariah Smith, *do*.  
 Henry W. Taylor, *Ontario*.  
 Jonathan Buell, *do*.  
 David Hudson, *do*.  
 Hudson M'Farlan, *Orange*.  
 Goldsmith Denniston, *do*.  
 Stephen W. Fullerton, *do*.  
 Horatio Reed, *Orleans*.

Arvin Rice, *Oswego*.  
 John M. Richardson, *do*.  
 John A. King, *Queens*.  
 Hezekiah Hull, *Rensselaer*.  
 Jacob A. Tenyck, *do*.  
 Israel Oakley, *Richmond*.  
 David Clark, *Rockland*.  
 Calvin Wheeler, *Saratoga*.  
 Walter Van Vechten, *do*.  
 Silas H. Marsh, *Schenectady*.

Mitchell Sanford, *Schoharie*.  
 Nathan Wakeman, *Seneca*.  
 John Coryell, *Tioga*.  
 Robert Swartwout, *Tompkins*.  
 Benjamin R. Bevier, *Ulster*.  
 Esbon Blackman, *Wayne*.  
 Nicholas Cruger, *Westchester*.  
 Francis Barretto, *do*.  
 Niles Benham, *Yates*.

The Senate received this bill from the assembly on the 16th of April, and read it a first and second time.

Three days afterwards, viz., on the 9th of April, Mr. Young, from "the select committee, to which was referred that part of the Governor's message which relates to the *repeal of the restraining law, and the introduction of free competition in the business of banking*," made an elaborate report, which is principally occupied with a history of the fluctuations of trade in England and this country, and a discussion of the elementary principles of currency.\* A few quotations from it will answer the purposes of this argument.

After referring to the report of the committee of the Senate made the previous year, on the subject of a general system of private banking, and adopting the opinions of that report, the committee say:

"The subject of free competition in banking has, for some time past, very much occupied the public mind." [Senate Doc. 1838, No. 68, p. 2.]

"Impressed by the current of the public will, the Governor has recommended to the Legislature 'to discontinue the present mode of granting charters, and to open the business of banking to a full and free competition, under such general restrictions and regulations as are necessary to ensure to the public at large a sound currency.'" [1b.]

In conclusion, they say:

"The security, responsibility, checks, and restraints which ought to be

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\* This report is written with great spirit and force; and exhibits extensive research, and a familiar acquaintance with the subjects treated; but the imagination of Senator Young was evidently greatly excited on those subjects when he wrote it. His views are certainly too extravagant and ultra for the practical wisdom of the present day.

imposed upon banking associations, are indicated in the report to which reference has been made, and need not be repeated." [Ib., p. 39.]

The senate took up the bill, in committee of the whole, on the 16th of April, and again on the 17th, when it was reported to the senate, with amendments. The senate then proceeded to consider and determine several other amendments, offered by different senators, all of which failed, except one offered by Senator Beekwith, which was to add a new section at the end of the bill, in substance the same as the present thirty-third section, except fixing the specie basis of circulation at *fifteen*, instead of *twelve and one-half* per cent., as it now is.

Thus amended, the bill was approved, and ordered to a third reading, by a vote of twenty-four to eight. It was read the third time the same day, and after being so read, Senator Powers offered a resolution, that it required a two-thirds vote to pass it. This resolution was decided in the negative by a vote of seventeen to ten. The bill, when this vote was taken, was the same precisely as the law now is, except the difference mentioned in the amount of the specie basis; for the assembly, as we shall soon see, adopted all the amendments of the senate, except the new section respecting the specie basis, and finally agreed to that, modified as to the amount of the per cent. as it now stands.

Hence, the vote of the senate was the expression of the direct opinions of the senators upon not only the general question of the constitutionality of the statute, but upon the question whether the *associations* were *corporations*.

The senators who thus gave their solemn opinions in favor of the constitutionality of this law, were:

Frederick A. Talmadge, *1st District*.  
 Gulian C. Verplanck, *1st District*.  
 Henry A. Livingston, *2d District*.  
 David Spraker, *4th District*.  
 Samuel Young, *4th District*.  
 Martin Lee, *4th District*.  
 Micah Sterling, *5th District*.  
 Levi Beardsley, *6th District*.  
 Daniel S. Dickinson, *6th District*.

Laurens Hull, *6th District*.  
 Chester Loomis, *7th District*.  
 John Beardsley, *7th District*.  
 Samuel L. Edwards, *7th District*.  
 John Maynard, *7th District*.  
 Isaac Lacy, *8th District*.  
 Samuel Works, *8th District*.  
 William A. Moseley, *8th District*.

On the same day the senate passed the bill by a vote of twenty

to eight. All the senators who expressed opinions in favor of the constitutionality of the bill, and that it was not a two-thirds bill, voted for it on its final passage, except Senator Young; and three of those who were of opinion that it was a two-thirds bill, viz., Coe S. Downing, from the first district, John P. Jones, from the second, and Edward P. Livingston, from the third, voted for it on its final passage; as did also Henry A. Van Dyck, from the second district, who did not vote on the other question.

The bill was sent the same day, viz., the 17th of April, to the assembly, who referred it and the amendments of the senate to a special committee, of which Mr. Patterson was chairman, who the next day reported and recommended that the assembly agree to all the amendments of the senate, except the one respecting the specie basis; which was accordingly done. The senate adhered to its amendment, and the assembly insisted upon its resolution of non-concurrence. Each house then appointed a committee of conference, who agreed on the section as it now stands. Both houses approved of the compromise, and the bill was sent to the Governor and approved by him the same day.

No statute of this state, I presume, ever underwent a fuller discussion, or elicited more legislative and financial talent and research. The attention of the whole state was directed to the subject, from the chief magistrate to the humblest citizen. The assembly went into committee of the whole on this bill TWENTY-SIX different times, and on nearly as many different days; and took upon it and its different sections FOURTEEN divisions, and the senate EIGHT. The Governor approved of the bill, knowing it had been passed as a majority bill; for it had not the certificate required by statute to be attached to two-thirds bills. (1 R. S. 156, § 3.) Had his opinion been, that it was either an unconstitutional or a two-thirds bill, it would have been his unquestionable duty to withhold his approbation.

The origin, progress, and final passage of the bill, and especially the message of the Governor which recommended it, the reports of the committees of the senate and assembly, and the vote of the senate relative to its being a two-thirds bill, all concur in furnishing *conclusive* evidence that the Legislature did not intend by it to create *corporations*.



The fact has already been mentioned, that the Legislature of this state has never passed an act of incorporation, general or special, without giving the corporate body a *seal*. If there was any doubt about the intention of the Legislature in this instance, the omission to give the association seals would solve that doubt. I have not felt at liberty to omit a reference to this circumstance, though I cannot but regard it as comparatively unimportant, when there are so many other decisive proofs of the intention of the Legislature.

The intention of the lawgivers being known, and I might add admitted by the counsel for the defendant, how can a court of justice, which expounds but does not make the law, disregard that intention?

If it is done at all, it can only be on the ground that the Legislature designed to evade the constitution, and have passed a statute in fraud of its provision. This, in other language, is saying that the NINETY-SIX senators and members of the assembly who voted for it have disregarded their oaths. That, instead of supporting "the constitution of the state of New York," as those oaths required, they have deliberately violated it. When we recall the names, characters, and services of those gentlemen, the thought is revolting. No; the true and correct view of the subject is, that those distinguished public servants, and *honest* men, did not intend one thing and express another; but, that seeing the necessity of a change in our system of banking, determined to open it to our citizens generally, and permit them to prosecute it, if they chose, in the form of associations which neither had corporate powers, nor would be subjected to corporate odium: yet under such regulations as would secure to the people a safe and convenient currency. These associations may be called limited partnerships, joint-stock companies, or whatever else any one chooses, so long as they are not corporations.

In discussing this branch of my subject, I would call the attention of the court to the proposition, that the only safe evidence of the intention of the sovereign power to create a corporation is an explicit legislative enactment. If that is wanting, it is almost, if not quite certain, that the sovereign will is not that a corporation shall exist; and probably in this country the safest and best rule would be, that nothing but a clear and unequivocal

cal legislative declaration shall constitute a corporation. But whether that is the preferable rule or not, at least this is clear, that in the absence of such declaration, nothing but the strongest reasons and most unequivocal evidence should be considered sufficient to authorize a judicial opinion in favor of a corporate existence.

Let the subject then be viewed in what light it may, the conclusion appears to be the same, viz., that the associations authorized by this statute are *not corporations*.

My second position is that, admitting that the *associations* authorized by this statute are *corporations*, still the statute is constitutional.

*Statute Constitutional, though Associations are Corporations.*—As the act must be presumed to have been correctly passed, as will be hereafter, I trust, most satisfactorily shown; that is, by a majority of a quorum of each house, if the bill is a majority bill, and by “the assent of two-thirds of the members elected to each branch of the Legislature,” if the bill is a two-thirds bill; the question arising under my second position is, whether the Legislature can pass a law by any vote, majority or two-thirds, authorizing the formation of an indefinite and unlimited number of bodies corporate, or in other words, whether the Legislature can now provide by a general law for the incorporation of an unlimited number of voluntary associations, as it could, and did in many instances, before the adoption of the present constitution.

It is admitted by all, that previous to the adoption of the present constitution, the Legislature had unquestionable authority to pass general laws of incorporation, and the power had been exercised in five prominent instances. viz.:

“An act relative to the university,” passed April 5, 1813 (2 R. Laws, 263), which authorized the incorporation of an indefinite and unlimited number of colleges and academies.

“An act to provide for the incorporation of religious societies,” passed April 5, 1813 (3 R. S. 292), which authorized the incorporation of a like number of religious societies.

“An act to incorporate such persons as may associate for the purpose of procuring and erecting public libraries in this state,” passed April 1, 1796 (3 R. S. 288), which authorized the incorporation of the like number of libraries.

"An act to incorporate medical societies, for the purpose of regulating the practice of physic and surgery in this state," passed April 10, 1813 (3 R. S. 304), which authorized the incorporation of a medical society in each of the counties in this state.

"An act relative to incorporations for manufacturing purposes," passed March 22, 1811, which authorized the incorporation of an indefinite and unlimited number of voluntary associations for manufacturing purposes.

I will here repeat the clause in the constitution, which it is contended has deprived the Legislature of the power to pass general laws of incorporation. It is in the following words :

"Sec. 9. The assent of two-thirds of the members elected to each branch of the Legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes, or creating, continuing, altering, or renewing any body politic or corporate." [Const., Art. 7, § 9.]

The first proposition for which I contend on this branch of the discussion is, that this clause in the constitution is not applicable to a general law, which authorizes *all* our citizens to unite in companies, and incorporate themselves to carry on any business or manufacture which the Legislature may think can be more usefully and beneficially for the community, conducted in that way, than by individual effort ; but, on the contrary, was intended to apply to every separate act of incorporation which the Legislature might thereafter pass, conferring privileges on a few, to the exclusion of the many, and thus restrain and impede the granting of monopolies, which are exclusive privileges, and produce inequalities of rights ; giving to a few citizens advantages which are refused to all others.

Two official opinions on this subject have been delivered by two successive attorney-generals of this state, viz., Messrs. Bronson and Beardsley—one on a call from the senate, and the other on a call from the assembly.

The acknowledged talents and respectability of these officers entitle their opinions to great consideration.\* When we reflect,

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\* Mr. Justice Bronson here remarked that his opinion, alluded to, ought not to be regarded as an authority. It was formed without the benefit of argument by counsel, and was worth no more than the reasons it contained, and he should be happy to hear them fully examined.

however, that those officers have not the aid of arguments by counsel, and are frequently obliged to give their opinions to the Legislature, without full time for examination and reflection, and in the midst of other pressing professional and official engagements, we can hardly expect from them the matured and cautious judgment of a judicial decision. These private acts of incorporation are also often blended with the attachments, interests, and struggles of political partisanship, and that man is more than human who can wholly guard against their influence, while surrounded by them, and enjoying honors and distinction, which are, to some extent at least, the reward of partisan fidelity. One of these opinions was delivered in 1835, and the other in 1837; both, unfortunately, since the policy of creating incorporations, especially for banking purposes, had become, in some measure, a beacon light, by which to rally and direct party zeal. We know the learned and upright judge who now fills one of these seats, too well to doubt that he is not only willing, but happy to have recalled, on this occasion, any incident or influence which may, perchance, have imperceptibly exposed him to error, when, as attorney-general, he gave the opinion alluded to. Knowing our danger, we may escape, and that voice is friendly which gives us warning.

Attorney General Bronson gave his opinion on the 6th of January, 1835, on the call of the senate. (Senate Documents of 1835, No. 4.) After a pretty full discussion of the subject referred to him, which was a proposed amendment of the general act authorizing incorporations for manufacturing purposes, he arrives at several conclusions, of which the third is as follows:

“The Legislature cannot now provide by general laws for the incorporation of voluntary associations, but must act directly in every grant of corporate privileges; creating some one or more corporations in particular.” [Ib., p. 13.]

Attorney General Beardsley gave his opinion on the 18th of April, 1837, on the call of the assembly. (Assembly Doc. of 1837, No. 303.) After a more limited discussion than that of his predecessor, he states several conclusions on the subject referred to him, which was the “Act to authorize associations for the pur-

pose of banking," which the assembly proposed to pass in 1837, and which I have mentioned in the former part of my argument, the third of which conclusions is in these words:

"That the bill is unconstitutional, as it assumes to authorize the creation of an indefinite and unlimited number of bodies corporate, and should it pass into a statute, and associations be formed under it, they would, for the purposes contemplated, be absolutely null and void." [Ib., p. 9.]

The resolution of the assembly calling for this opinion was passed on the 13th of April, and the opinion was delivered on the 18th. A brief space for forming an opinion, fraught with such a momentous result. A result which strips the Legislature of our state of a power, exercised repeatedly from almost the commencement of our Government, with the happiest and most beneficial effects.

Mr. Bronson, in the forepart of the same opinion, in which he states his conclusion against the power of the Legislature to "provide by general laws for the incorporation of voluntary associations," in answer to the first interrogatory from the senate, states the following as his answer:

"FIRST. The attorney-general can see no substantial ground for doubt that the Legislature may, by one act, create two or more corporations. The constitution says nothing on that subject. It only prescribes the number of votes which shall be necessary to every bill creating a corporate body; leaving all other questions about the passing of such laws as they stood before, to the discretion of the Legislature. [Ib., p. 4.]

In other words, an act may be passed, creating any given number of corporations, from one to one hundred thousand, provided each company is distinctly and directly incorporated by the act.

Both of these conclusions are formed on the same section of the constitution. It seems impossible to reconcile these two constructions of it. What is there in the language or spirit of the constitution which will prohibit the Legislature from passing a general law for the incorporation of an unlimited number of voluntary associations—that is, from incorporating as many companies as our citizens choose to form—and yet permit the Legislature, by a law, to incorporate as many companies as our citizens choose to *apply* for. The only difference is, that in the



one case, the Legislature anticipate the applications, and pass a general law to meet them; in the other, they wait till the applications are made, and then by one law incorporate them all. But I submit, that the mode of legislation proposed is far less safe than the one condemned. For a law containing ten, one hundred, or any given number over one of distinct incorporations, cannot so readily or conveniently, nor will be likely to be so thoroughly scrutinized by the members of the Legislature, as a general law of incorporation, plainly designating the object of associating, and placing distinct landmarks and strong barriers around the incorporations permitted.

In truth, the constitution neither directs as to one or the other mode. It is silent upon both; and as Mr. Bronson says in his first conclusion:

“The constitution says nothing on that subject. It only prescribes the number of votes which shall be necessary to every bill creating a corporate body, leaving all other questions about the passage of such laws as they stood before, to the discretion of the Legislature.”

This view of the constitution has been taken also by every Legislature since its adoption, as appears by a joint rule of the two houses, which has been in force for years. It is in these words: “The same bill shall not create, renew, or continue more than one incorporation, nor contain any provisions in relation to altering more than one incorporation.” (See Joint Rules.) And Mr. Bronson, after quoting this rule, adds: “This rule must have been adopted, on the ground that the subject had not been regulated by the constitution, but rested in the discretion of the Legislature.” [P. 5.]

Mr. Beardsley also holds this language in his opinion (p. 8). Speaking of the constitution, he says:

“In its strict terms, the clause is confined to bills which *assume to create* corporate bodies, and does not extend to one which authorizes their creation by the voluntary association of individuals.” He adds: “But this, in the opinion of the attorney-general, would be too narrow a construction of that instrument; it would disregard its spirit and object, and adhere with rigid technicality to the letter. As understood by the attorney-general, it requires that all corporations thereafter to be formed by the Legislature, should receive the direct assent of two-thirds of the members, in the passage of bills,

indicating and creating each particular institution. This is the spirit of the provision, and is consistent with the letter."

The court will at once see that Mr. Beardsley does not prove, but assumes, that the spirit of the constitution is different from its language. He refers to nothing in the context; to no other parts of the constitution, nor to contemporaneous history, which are the usual sources of light in giving construction to doubtful clauses of a constitution; to nothing to justify his assumption that the spirit and object of the constitution are different from its language. And yet, on such untenable ground, he gives it a construction which deprives the Legislature of an otherwise unquestionable power; and that, too, in direct violation of a well-settled rule of construction, viz., that when the language of such an instrument is plain and intelligible, a court is not at liberty to depart from it.

Both of the gentlemen direct their efforts far more to proving what the constitution should be, than what it actually is. A perusal of their opinions will fully justify this remark. They appear to be deeply impressed with the idea, that the state is in great danger of receiving irreparable injury from the increase of corporations; and they seem to regard it as their duty to find some constitutional mode of checking their multiplication.

Mr. Bronson says:

"It is impossible to read the clause without perceiving that the design of the convention was to impose a check on the increase of corporations." [Page 9.]

"When such grants are made with an exclusive reference to the interests of the applicants; and when, however laudable may be the object, they are multiplied beyond the public wants, a positive injury is done to the whole community."

"The subject must have been regarded in this light by the framers of the constitution; and without wholly prohibiting future grants, they imposed such a check on the Legislature as was deemed best calculated to secure the people against the unnecessary increase of corporate franchises." [Page 10.]

The remedy Mr. Bronson proposes for the evil is indicated by the following extract from his opinion:

"The construction which more certainly than any other will attain this end, is that which requires the Legislature, in cases not already provided for by law, to act *directly* on every question of this description; and which

requires the assent of the members—not to a bill under which an indefinite number of corporations may spring into life, but to a bill creating some one or more corporate bodies in particular. This construction, while it is not inconsistent with the letter of the constitution, is best calculated to give full effect to the intention of the convention, and secure the public against the unnecessary increase of corporate franchises.” (Pages 10, 11.)

Mr. Beardsley also says :

“The mischief which the constitution designed to prevent, was the inordinate increase of private corporations.” (Page 8.) “The restraint is upon their undue multiplication.” (Page 11.)

The remedy which he indicates for this evil is the same as that proposed by his predecessor. He says :

“The constitution demands that the legislative discretion and judgment shall be applied to every corporation which must be created by bill. If the contemplated institution is approved by the requisite number of members, the bill should pass into a law. But the discretion and judgment which are thus invoked, and the exercise of which is thus enjoined, can in no sense be exerted in the creation of institutions which spring into existence at the bidding of individuals.” (Page 9.)

Who does not see—and I ask these gentlemen themselves, if now, when the incidents and associations of the moment have passed, if they do not see—that they were laboring under an undue apprehension of evil in regard to the increase of corporations? The remedy, too, which they propose, all must see was entirely fallacious as an obligatory constitutional restriction on the Legislature. For what legislature, who had deliberately resolved to authorize prospectively one hundred or an unlimited number of corporations to promote and favor a particular branch of trade or business, would refuse any number of separate *applications* for the same purpose? Besides, the history of the state for the last fifteen years, during which the new constitution has been in operation, shows that while no evils, political or moral, have been experienced from the many corporations formed under our general laws, we have suffered deep and abiding evil from our legislation in favor of private corporations and their subsequent action. The lobby of our legislative halls has become a by-word and a reproach. How have corporate rights been stealthily obtained from the Legislature? What acts of incor-

poration have savored of, and raised high through the state, the notes of alarm and indignation against undue influence, if not disgusting corruption? It may certainly be said, Not general acts of incorporation. Both the gentlemen appear to have supposed that if the Legislature was deprived of the power to pass laws which did not directly, and in terms, incorporate a specific company or companies by name, and were thus obliged to look directly upon each corporation created, the evil they so greatly apprehended would be checked. For they well concluded, both from the past history of our legislation, the operation of the joint rule before mentioned, and the fitness of things, that it was highly improbable that our Legislature would directly incorporate, by one law, more than one specific corporation, and thus they were led, the one to propose, and the other to approve, an entirely new idea, which was, that by no vote, either majority or two-thirds, could the Legislature pass any bill of incorporation which did not, in the language of Mr. Bronson, "create some one or more corporate bodies in particular," by direct legislative action on the question, and in the language substantially of Mr. Beardsley, which did not receive the direct assent of two-thirds of the members elected to each branch of the Legislature, and indicate and create a particular institution. The history of our legislation and of the adoption of the constitution shows that this, in the broad form presented, was fresh ground. While it is not the usual mode of creating corporations by a separate and distinct bill for each act of incorporation, inasmuch as it permits any given number of corporations in particular to be created by one bill, so neither is it the other mode by general act. Yet, as it were by a side wind, it takes from the Legislature the well known and understood power of enacting general laws of incorporation in the ordinary form. I hazard nothing in saying that the convention which adopted the constitutional provision never even approached its conception. What a new form our incorporating laws would assume if it was carried into practice! How the convention would have been startled, and with what surprise would our Kents, Spencers, and others who were members, been struck, had the new legislative offspring, to which they were unconsciously giving existence, appeared in the full stature in which it is proposed to us; and if informed that

while yet in youth, some years short of majority, it would control our Legislature, restrain its action, strip it of a beneficial power, they would have strangled it past hope. It descends to and rests on the forms of the bills which the Legislature are to pass, and drives us to the inquiry whether the convention intended to place their restriction solely on so slight and changeable a basis. The mere statement of the inquiry furnishes the answer.

It may also be truly said that a bill which creates at once, and without further action, one or any given number of corporations in particular, is no more in substance a bill creating bodies corporate, than a bill which authorizes, regulates the manner, and designates the object of an unlimited number of corporations. They are both, in one sense, bills creating bodies corporate, but by different modes of legislation. One accomplishes the object in one way, and the other in another. In either case the corporations may be said to be created by bill. And the legislative action is substantially as direct in one case as the other, for there is no efficient action in either case except in passing the bill. The true difference is, that in one case the corporation is created at once, and the only act remaining to be done is acceptance by the corporators; in the other, the corporators are to perform certain acts prescribed by the statute. There is more or less action by individuals in each case. And the convention embraced and acted upon two ideas, fairly indicated by its language, viz.: 1st, Full and direct creation at once by bill; and 2d, Separate enactment;—which two ideas are the distinguishing features of the mode of corporate legislation intended to be prohibited, as will hereafter be more fully illustrated.

And the question recurs, What does the clause in the constitution prohibit? Does it prohibit the passage of general laws of incorporation, or not? Before discussing the question on its merits, let us settle the matter of authority upon the one side as well as the other.

Directly opposed to the opinions of Messrs. Bronson and Beardsley is the unanimous opinion of the revisers of our statutes—Messrs. John Duer, B. F. Butler, and John C. Spencer. They were clearly and unequivocally of opinion that this clause of the constitution did not apply to a general law authorizing the creation of corporations, and that the Legislature had the same power



to pass such laws after the adoption of the present constitution as they had before. In their revision they proposed to revise and amend all the five general laws of incorporation before referred to. (See Revisers' Reports, chapter 15, of the first part, Title 1, Articles 2, 3, of colleges; Articles 4, 5, of academies; Report of chapter 18, of the first part, Title 1, of religious corporations; Title 2, of the incorporation of library societies; Title 3, of medical societies, and Title 4, of manufacturing corporations.) They also proposed an entirely new general law of incorporation, authorizing an indefinite and unlimited number of corporations of "Obituary Societies." (Revisers' Reports, chapter 18, of the first part, Title 6.)

Mr. Bronson, in his opinion, states, in reference to the opinion of the revisers, that he "is aware that there is high authority for a contrary opinion" to his own. The Legislature also, which enacted our revised statutes, concurred in opinion with the revisers, and approved and enacted their revision of the general law authorizing the incorporation of academies. (2 Rev. Laws, 263, Revisers' Reports, chapter 15, Title 1, Articles 4, 5; 1 R. S. 461.) And a subsequent Legislature has materially altered and amended the same act by a majority vote, as the journals will show. (Laws of 1835, chap. 34.)

It will be remembered that the prohibition in the constitution, whatever it is, extends to every law "continuing, altering, or renewing any body politic or corporate," as well as creating it. The revisers, consistent throughout, were of opinion that this clause in the constitution did not apply to amendments and alterations of our general laws of incorporation, any more than to the enactment of other laws like them; and so Mr. Bronson, in his opinion, says. This is his language:

"From these reports it will be seen that the revisers, who were gentlemen of high standing in the legal profession, entertained no doubt upon two points; first, that the existing general laws for creating corporate bodies were still in force; secondly, that they might be revised and amended in the same manner as other public statutes." (Page 7.)

Mr. Bronson, however, stated the following as one of his conclusions:

"Fourth. The existing laws for the incorporation of voluntary associations may be amended, but not in such a manner as to authorize associations which are not now provided for by law." (Page 13.)

This opinion is formed on the constitutional clause we are considering, and I would respectfully inquire how it can be held to apply to a law altering or amending a body politic or corporate in some particulars, and not to a law amending or altering it in other particulars.

The thirteenth section of the seventh article of the constitution contains a provision, that all the acts of the Legislature of this state then in force, and such parts thereof as were repugnant to the constitution, were abrogated. Yet in the opinion of all, Messrs. Bronson and Beardsley included, not only were our general laws of incorporation then in force unaffected by the provision, but all corporations formed under them since its adoption were in like manner unaffected by it, and were legally and constitutionally incorporated. If the Legislature cannot pass general laws of incorporation, on what principle can those already passed be amended or altered? And if they cannot be altered, they are eternal; and we must be content to have laws that no earthly power can touch, improve, or modify.

We have also the opinion of the late Governor of this state, the Hon. Wm. L. Marcy, in opposition to the opinion of Messrs. Bronson and Beardsley. In his message of 1838, before quoted, he says:

"Doubts have been entertained as to the constitutional competency of the Legislature to pass a general banking law conferring corporate powers. Without entering into the argument on this question, I will only say that I am inclined to the opinion that the Legislature have the power to pass such a law; but the spirit of the constitution requires that it should be passed as a two-thirds bill."

He adds:

"It is proper I should also say that this opinion is entertained with much diffidence, and is not expressed without duly considering the respectful deference justly due to the high authority by which it is opposed."

To this may be added the deliberate opinions, after full discussion, of the distinguished members of the profession of law who were in the senate and assembly in 1838, and the opinion of a great number of the soundest lawyers in this state, who have been consulted on this subject by the different associations which have been organized under this law, and many of whom have

given high evidence of confidence in their own opinions by investing their funds in those associations.\*

When we consider the high general and professional attainments of the revisers of our laws, and their peculiar qualifications to give a sound and correct construction to our constitution; the high judicial reputation of our late Governor, and his unquestioned qualifications to judge correctly upon the true construction of the constitution; the high professional reputation of a large number of eminent lawyers who voted for this statute in the senate and assembly, and of those who have given their opinions to the associations, and vested their funds in them—it may be said, without any impeachment of the acknowledged professional acquirements of Messrs. Bronson and Beardsley, that the unanimous and concurring opinions of the three revisers (supported as they are by the opinions of others) upon all the

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\* I will mention two prominent instances. Chancellor KENT and GEORGE GRIFFIN, Esq., both of whom are liberal subscribers to the Bank of Commerce, and the former a large subscriber. The labors and reputation of Chancellor Kent belong to the country; and nothing which I can say will enhance the value of the former, or add to the latter. It is sufficient to mention his name to inspire all the confidence that human worth commands. I may be allowed, however, to remark, that although he has now entered upon his seventy-seventh year, his faculties of mind and body appear to be unimpaired, his step is yet elastic, and his mind active. Since his retirement from the office of Chancellor, in consequence of having arrived at the age limited by the constitution, which, if my memory serves me, was on the 30th of July, 1823, he has written his Commentaries, which have already passed through three editions, each of which he has enlarged, improved, and corrected himself. He has also done a very large amount of professional business at his chambers, in giving and writing opinions, preparing written arguments, and drafting special conveyances; and although his charges are always very reasonable, he has thus made a liberal provision for his family; and still unimpaired by such a long and steady course of useful and honorable employments thus happily ended, now waits his hour with cheerful serenity.

GEORGE GRIFFIN, Esq. This gentleman is also well known to the profession. He is in its very first rank; and when age, length of active practice, ripened experience, natural talent, the powers of the wary and watchful advocate, and the importance and extent of professional engagements are considered, perhaps I should say at the head of the practicing bar of this state, especially at Nisi Prius.

propositions we have just been discussing, should rather command our assent than the opinions of those two gentlemen which we have been considering.

Tested, therefore, by the weight of authority, it must be determined that the constitution does not apply to general laws creating or authorizing the creation of corporations; and that our Legislature may now, as they could before its adoption, pass such laws.

One reflection here occurs. By holding the construction of the constitution for which we contend, the course of legislation is clear, wholesome, and safe. By taking the other, we meet with difficulties; are involved in counter-currents, if not inconsistencies; legislation is driven into devious courses; doubts are cast upon private rights; and honest industry alarmed and checked.

Let us now direct our attention to the determination of the true construction of the clause of the constitution under discussion.

The first, most usual, and natural mode, is to look into the previous and contemporaneous history of the state, and ascertain the evils which this constitutional provision was intended to guard against for the future. In an uncompromising search for truth, the fact cannot be disguised, that the circumstances attending and consequent upon the incorporation of the Bank of America, on the 2d June, 1812, gave rise principally, if not wholly, to this clause of the constitution.\* The prorogation of the Legislature by the Governor of this state, for the avowed object of preventing the incorporation of that bank by corrupt means (the vote upon which showed a settled majority of one in its favor); the subsequent indictment for bribing, or attempting to bribe, members of the Legislature, and the public trial of two gentlemen, who had theretofore stood high in public estimation, been repeatedly honored with offices of high public trust, and

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\* The charter of that bank has, since its incorporation, been materially amended, its capital reduced, and it is now under the management of our most respectable citizens, none of whom, it is believed, were actively concerned in procuring its charter. It now stands among the first moneyed institutions of our state, and its officers receive and deserve the full confidence and respect of the community.

both of whom were then in office, and discharging the duties of their respective stations; the alarm which was felt by the community, lest our institutions should fall a prey to a daring thirst of gain, which sought its gratification by corrupting the very fountain of our laws, were all yet held in vivid remembrance. And down to the very time, and during even the session of the convention which framed our present state constitution, the public press was the vehicle of charges, criminations and recriminations against many of our public men, for their alleged agency in procuring the charter of that bank. And some of those gentlemen were members of that convention. And it was probably owing to this circumstance that the clause underwent so little discussion in the convention as it did, and to the same circumstance that Mr. King, the chairman of the committee who reported it, assigned his reasons for its adoption in brief and general terms. (Debates of Convention, p. 446.) And doubtless to the fact, that some of the gentlemen charged with delinquency in regard to the chartering of that bank, and many of their relatives and friends, were still on the theatre of action in this state, is to be attributed the guarded though still explicit language of Chief Justice Nelson, when speaking of the evil which this clause in the constitution was intended to check, in his opinion delivered in the case of *The People vs. Morris* (13 Wend. 336), and to which I shall hereafter call particular attention.

That this section of the constitution owed its origin to the cause mentioned, more evidently appears from the fact, that as first proposed and reported by Mr. King, it only required the assent of two-thirds of the members "in both houses, to the passage of any act of *incorporation*." And it was afterwards amended in the convention, by extending it to acts "appropriating public moneys for local purposes." (Debates of Convention, p. 446.) Chief Justice Nelson, who was a member of the convention from Cortland county, has also added his authority in favor of my position in respect to the true origin of this constitutional provision. Speaking of the time when the present constitution was formed, and of the evil which it was intended to remedy, he says:

"But *private corporations* had multiplied to an extent that had attracted public attention, especially *banking institutions*. These had been sought for



with zeal, and their enactment attended with circumstances that awakened public suspicion and alarm. So extreme had the evil become at one period of our history, that the chief magistrate of the state felt it his duty to exercise the power then existing in the constitution of proroguing the Legislature, and was triumphantly sustained by the people in the execution of this high and delicate trust. The fact affords strong evidence of the deep impression made upon the public mind as to these and *similar* private corporations, and of the scope and purpose of the clause on this subject. If we resort to the history of its introduction into the new constitution, the above view will be confirmed. Mr. King, chairman of the committee of the legislative department, reported the section; and when it came under consideration, said that the committee had looked upon the multiplication of corporations as an evil; they had been created for a variety of purposes; they were exceptions to the common law; they could not be proceeded against in the ordinary way of prosecutions against individuals in courts of justice; they ought not to be increased, but should be diminished as far as could be done consistently with the preservation of vested rights. It is obvious, though the language used in the clause in question is general, that the honorable chairman had in his mind (and he spoke for the committee), the case of private corporations; that the great inducements to the adoption of the clause was a check upon them, and that the organization of communities, and the investing them with the privileges of mere municipal jurisdiction and authority, were not at all in contemplation." [The People *vs.* Morris, 13 Wend. 336, 337.]

It will be observed that the chief justice, in speaking generally of the evils which the constitution intended to remedy, remarks, "*Private incorporations* had multiplied to an extent that had attracted public attention, especially *banking institutions*." A recurrence, however, to the history of the times will satisfy him, that the idea of a repeal of the Restraining Act, or the passage of a general law of incorporation for banking purposes, was the farthest possible from the mind of the convention. That no one at that day, even in his wildest dreams, thought of opening the business of banking to all our citizens. The evil that pressed the convention and the public was, the frequency of the enactment of separate acts of incorporation, each of which thronged our capitol and legislative halls with their agents, who found their reward in obtaining exclusive privileges, principally for banking, which were withheld from our citizens generally. Opening at once to a whole community the business of banking, allowing all to bank who choose, is a very different measure, rests

on entirely different principles of policy, and must be followed by entirely different results, from increasing from time to time, under a strong external pressure upon the Legislature, stimulated by individual interest, private and exclusive corporate privileges for banking. Nothing more clearly shows the difference between the two, than the history of the enactment of our present General Banking Law, and of the separate incorporation of the other banks of the state. Nor does anything more satisfactorily prove the certainty of the overthrow of the banking monopolies of this state, and the suppression of their spirit, than the early, steady, active, and persevering opposition of the holders of the exclusive charters to the new general system.

The debates of the convention, though very brief, general, and unsatisfactory, also show that the evil aimed at was the multiplication of monopolies—partial and unequal laws—exclusive privileges, which benefit a few to the injury of the many. [Debates of Convention, 446.]

As there never was any complaint against the corporations created under general laws, there would seem, therefore, to be no doubt but that this provision in the constitution was intended to remedy the evil of partial legislation, and to remove the temptations to corruption which such a course of legislation necessarily draws after it. The obvious and natural remedy was the one adopted, viz., not to allow the enactment of a law either “appropriating the public moneys or property for local or private purposes,” by which the few would be benefited at the expense of the many, or “creating, continuing, altering, or renewing any body politic or corporate,” by which privileges would be conferred on a few to the exclusion of the many, by the vote of a bare majority; but that when either of those objects were sought through the agency of the Legislature, it should be so clear a case that two to one should be in favor of it; and besides, if another case like the Bank of America should occur, in which the applicants for an exclusive privilege should be so reckless in regard to the means of effecting their object, as to use the criminal and subduing power of gold, they should be compelled to conquer two-thirds of all the members elected to each branch of the Legislature—a much more difficult, hazardous, and expensive

enterprise than drawing into their interest a bare majority of each house.

There was at that time, and still is, only two modes of legislation known or understood for incorporating companies. One, by a general law allowing all who choose to take an act of incorporation for conducting a particular business or trade. The other, by a special act, incorporating a single and specific company.

Is it not then obvious to all, that this clause in the constitution, so far as it relates to corporations, was intended to apply to that mode of corporate legislation by which one act incorporated a single and separate company, and *not* to general laws, conferring the same privileges upon and affecting all our citizens alike.

Although Governor Marcy's remark in his message of 1838, that the spirit of the constitution required that a general banking law should be passed as a two-thirds bill, was made, as he said, with much diffidence, his high political and judicial standing demands a notice of it. He appears to have made the remark without recurring to the origin and cause of the constitutional provision, or to the two modes of corporate legislation then in use. He makes the remark, apparently, under the general impression that banking institutions are within the spirit of the clause, without reflecting upon the great difference between opening banking to all, and restricting it to a few; or that a general banking law, conferring corporate powers, is no more within the spirit of the constitution than a general manufacturing law, a general insurance law, a general whale-fishery law, or any other general law conferring like powers. If *one* general law creating corporations for a particular purpose is within the constitution, then *every other* general law conferring corporate rights for whatever purpose, is also within it. I cannot but persuade myself, that if the Governor had looked at the question in all its bearings and effects, he would have concurred with the revisers of our statutes in this particular, as he did in the more general proposition that the Legislature had the same power now as before the adoption of the constitution, to pass general laws of incorporation; and that the restrictive clause was only applicable to private and exclusive legislation.

The language of the constitution fairly and naturally indicates and covers this special legislation. It is :

“The assent of two-thirds of the members elected to each branch of the Legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes, or creating, continuing, altering, or renewing any body politic or corporate.”

Does not the section, tested by its language, apply, and only apply, to that mode of creating corporations then in general use, by a separate act for each incorporation? The assent required shall be “to *every* bill,” &c., “creating, &c., *any* body politic or corporate.” The language indicates separateness and directness of legislation, and must be strained to embrace general laws and indirect incorporation.

I do not mean to be understood as contending, that if a law incorporates more than a single company, it is not therefore embraced by the constitution. I contend for the great and manifest distinction between general and private legislation—between a law that confers the same privileges on all, and one which confers privileges on a few to the exclusion of the many. It may be difficult to mark the exact line, but not more so than to determine the old line between public and private acts, between internal improvements for general, and those for local benefit, and between bills appropriating public moneys for local and private purposes, and those appropriating them for general purposes. There is a broad distinction between them, founded on reason and principle. One is, and the other is not, within the evil provided against. One is, and the other is not, within the letter or spirit of the constitution.

Neither Mr. Bronson nor Mr. Beardsley claims that the words of the constitution naturally and freely apply to general acts of incorporation. All they contend for, in respect to the language, is that it is not directly inconsistent with their construction of the clause. Mr. Bronson says:

“This construction (that is, *his* construction), while it is not inconsistent with the letter of the constitution, is best calculated,” &c. “Such laws (that is, general laws), if not in direct conflict with the letter of the constitution, would be plainly calculated,” &c. (Page 4.)

Mr. Beardsley says :

“ In its strict terms the clause is confined to bills which *assume* to *create* corporate bodies, and does not extend to one which authorizes their creation by the voluntary association of individuals. But this, in the opinion of the attorney-general (that is, *his* opinion), would be too narrow a construction of that instrument.”

And then, after stating it as his opinion that the correct construction of the constitution is to consider it applicable to laws authorizing the incorporation of voluntary associations, he says :

“ This is the spirit of the provision, and is consistent with the letter.”  
(Page 8.)

Governor Marey also distinctly intimates his opinion that a *general banking law* is not within the words of the restrictive clause. He remarks, however, yet with much diffidence, as we have seen, that “ the *spirit* of the constitution requires it should be passed as a two-thirds bill.”

The framers of the constitution were well aware of our general laws of incorporation, and of the frequency with which such laws were passed. Some of them were even alluded to in the few remarks that were made in convention on adopting the restrictive section. Had it been the intention of the convention to include within this provision of the constitution general laws of incorporation, would not other and appropriate language for that purpose have been used? and especially if the convention had intended to prohibit altogether the passage of any more general laws of incorporation, either by a majority or two-thirds vote; (for let it be kept steadily in mind, that that is the position contended for by our opponents and sanctioned by the opinion of Messrs. Bronson and Beardsley.)—would not other language have been used? would not another and a distinct section have been introduced into the constitution? The manifest object of this section was to declare *by what vote* certain laws thereafter should be passed, and not *what laws* should or should not be thereafter passed. Besides, if the convention had supposed that the effect of this section would be entirely to prohibit thereafter the passage of all general acts of incorporation, there would certainly have been opposition; the policy of the measure would at least have



been doubted by many; a debate, and a full and protracted one, would have ensued. The public would have been alarmed by such a proposition, and the press would doubtless have been heard. And had the convention intended to prohibit the passage of general laws of incorporation for conducting the business of *banking*, or insurance, or any other trade or business, would there not have been in the constitution an appropriate clause? or had the convention intended to do anything except regulate the mode of legislation in respect to the vote to be given, would they have left their intention in doubt?

Seeing then that the language of the section does not call for, but on the contrary, repels the construction claimed by the counsel for the defendant; seeing also that it was not the intention of the framers of the constitution to prohibit thereafter the enactment of general laws of incorporation—let me inquire, briefly, if the light of experience should induce this tribunal to extend this constitutional provision by construction beyond the natural and fair purport of its language.

I think it far from rashness to assert, that if this section of the constitution could be submitted now to the people of this state, it would be repealed almost unanimously.\* Instead of promoting purity in our legislation, or restraining exclusive or unequal grants of corporate privileges, it has the directly opposite tendency, by enabling a few members in each branch of the Legislature to control its action, and thus force through the forms of legislation many measures as unjust as they are unwise.

Mr. Beardsley, in his opinion, uses quite as strong language on this subject as could be expected from him in the position and relations he then stood. He says:

“The restraint imposed by the constitution may be an unwise one, and unsuited to the present condition and wants of the community. It may have

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\* Chief Justice Nelson remarked in this stage of the argument, that it was universally admitted that the provision of the constitution had entirely failed to effect the object intended. Instead of remedying, it had increased the evil.

Mr. Justice Bronson expressed his full concurrence in this remark of the Chief Justice, and added, that every one must be sensible of its truth who had been familiar for some years past with our legislation.

been imposed without adequate cause, and have proved to be illusory and mischievous. These are all possible." (Page 9.)

I do not hesitate to add, that *they are all true*; and that such is the opinion of this community.

The report of the committee of the senate made in 1837, and from which I have already given extracts for another purpose, holds the bold and direct language of truth on this subject; and shows the lamentable and humiliating influence which this provision of the constitution has had in practice on our legislation.

The question then arises, is it the duty of this court to extend this constitutional provision by construction, or is it rather their duty to restrict its influence? The answer is obvious.

There is a single other idea which ought to be stated in this connection, and that is, that there is no danger from any source in permitting a legislature to legislate for the general benefit of the community; which must always be the case with all general laws of incorporation. They create no distinctions; they confer no exclusive privileges; they benefit all alike. Such a power, surely, ought not to be taken from our Legislature by implication or construction.

This court in the case of *The People vs. Morris* (13 Wend. 325), decided, under an opinion delivered by the chief justice, in respect to which it is bare justice to say that it challenges an equality with any one contained in our Reports, that laws, both general and special, incorporating or altering the acts of incorporation of our cities and villages, were not within the operation of this clause of the constitution, and might be passed by majority votes; although the court admitted that they were within its letter. The great principle on which this decision rests is, that these corporations, being bodies politic, were created for the general benefit of the community, and were not within the evil intended to be remedied by this constitutional provision, and that it would be dangerous, and could not have been intended by the convention, "to restrict the action of the Legislature in the municipal regulations of the state." The chief justice thus expresses himself:

"Are they within the evil this provision was designed to remedy? No one, I think, acquainted with the history of the times, or with the introduc-

tion of this clause into the constitution, will venture upon this ground. It may be fortunate for truth, and what is deemed a sound exposition of this provision, that all who may desire to examine it, can recur to his own recollection and challenge that of others upon this point. We think we hazard nothing in asserting, that the multiplication of cities or villages by the Legislature has at no time been a subject of complaint." [Ib., p. 336.]

How fully and forcibly this language covers the whole ground occupied by the present discussion! Who, acquainted with the history of the times, will venture to assert that the passing of general acts of incorporation has at any time been the subject of complaint? As such acts were not within the evil intended to be remedied, they should be excluded from the operation of the constitutional restriction, even if within its words, on the principle of the decision just cited; *a fortiori*, they should be excluded, not being within its words.

This great principle has been acted upon in this state ever since the adoption of the present constitution in respect to bills "appropriating public moneys or property for local or private purposes." Our legislation has been uniform in passing bills of this kind by the ordinary majority vote, where the benefit was general, though the appropriation was confessedly local.

I conclude this branch of my argument by stating the answer to the question proposed, viz., that this constitutional provision is not applicable to general acts of incorporation, and that the Legislature can pass a law by any vote, majority or two-thirds, authorizing the formation of an indefinite and unlimited number of bodies corporate; or in other words, that the Legislature can now provide by a general law for the incorporation of an unlimited number of voluntary associations, as it could and did in many instances before the adoption of the present constitution.

But if the court is not fully satisfied with this conclusion, and their minds are still in doubt, let me present one other rule of construction applicable to these great constitutional questions; a rule founded in the purest wisdom, and supported by the highest authority. It is, that no statute should be declared unconstitutional, unless it is *clearly and unquestionably* a violation of the constitution.

This court, in the case *Ex Parte M'Collum* (1 Cow. 564), said: "Before the court will deem it their duty to declare an act of the Legislature unconstitutional, a case must be presented in which there can be no rational doubt." And the Supreme Court of the United States, in the case of *Dartmouth College vs. Woodward* (4 Wheat. R. 625), held, "That in no doubtful case would it pronounce a legislative act to be contrary to the constitution."

If then the argument which has been presented has failed to produce conviction, and only brought the court into doubt as to the constitutionality of the statute, that doubt must be resolved in favor of its validity, and thus protect the immense amount of property invested under its sanction, and secure to the community the great benefits which have and must flow from its enactment.

*Statute is Constitutionally Passed.*—My third and last position is, that admitting that the constitutional restriction is applicable to general acts of incorporation, then I insist, that such a law may be passed by a two-thirds vote, and that this law will be presumed to have been so passed.

One of the propositions stated, and I trust satisfactorily proved, in the course of the argument in support of my second position, is that the constitutional provision was only intended to prescribe the *vote* by which each act should be passed which appropriated public moneys to local or private purposes, or created or altered any body politic or corporate, and left everything else to the discretion of the Legislature. This manifestly appears from the section itself, and might probably have been safely assumed without any argument. The only question then remaining is, whether this court is not bound to presume that this as well as every other act of the Legislature, which has passed through the office of the secretary of state to the state printer and been published according to law, has not been constitutionally passed; or in other words, whether this court can inquire beyond the certificate of the secretary of state, and institute an investigation respecting the manner in which any given law has passed the Legislature.

I hold with confidence the negative of this proposition.

Our statutes declare :

"§ 10. He (the state printer), shall print, in volumes of octavo size, so many copies of the laws of each session, with the concurrent resolutions and indexes that shall be delivered to him for that purpose by the secretary of state, as shall be annually directed by the secretary, who shall also revise and correct the proof-sheets.

"§ 12. All laws passed by the Legislature may be read in evidence from the volumes printed by the state printer in all courts of justice in this state, and in all proceedings before any officer, body, or board in which it shall be thought necessary to refer thereto. [1 R. S., p. 184.]

"§ 10. The secretary of state shall receive every bill which shall have passed the senate and assembly, and have been approved and signed by the Governor, or which shall have become a law notwithstanding the objections of the Governor, or which, not having been returned by the Governor within ten days, shall have become a law; and shall deposit such laws in his office.

"§ 11. He shall certify and endorse upon every such bill the day, month and year, when the same so became a law, and such certificate shall be conclusive evidence of the facts therein declared." [Ib., p. 157.]

"§ 2. No bill shall be deemed to have been passed by the assent of two-thirds of the members elected to each house, unless so certified by the presiding officer of each house." [Ib., p. 156.]

It has been supposed by some that two-thirds bills must have the certificate provided in this last section attached to them, or they are not valid. This has never been the practical construction put upon the section, as such certificates have not been published to my knowledge with the two-thirds acts, which they would have been, if they were considered essential to the validity of those acts. The object of the certificate would appear to be that for which it has heretofore been used, to apprise the Governor how the act has been passed, that he may understandingly exercise his power of veto. For if, in his opinion, a two-thirds bill has been passed by a majority vote, it is undoubtedly his duty to withhold his approval.

Other sections of the statute appear to indicate this as the object of the certificate.

The fourth section is in these words:

"§ 4. Every bill thus passed and certified must, before it becomes a law, be presented to the Governor; if he approves, he must sign it, and he shall endorse thereon a certificate of his approbation, and deliver the same so endorsed to the secretary of state." [1 R. S., p. 157.]



By this section, when the Governor approves a bill, he must endorse on it a certificate of his approbation, and deliver it to the secretary of state. His certificate, it would appear, is the evidence on which the secretary of state is to make his certificate, as directed by the eleventh section above quoted.

If the Governor does not approve a bill, and it is afterwards passed by two-thirds of the members present in each house, the presiding officer of each house must certify the vote thereof on the bill, and the presiding officer of the house which last passes it must deliver the bill so certified to the secretary of state. [See sections 5, 6, 7, 1 R. S., p. 157.]

These certificates appear to be the only authentication in such a case on which the secretary of state acts in endorsing his certificate.

If we give to the certificates, which the third section requires upon two-thirds bills, the same force and effect which are given to the certificates required upon bills disapproved by the Governor and afterwards passed by two-thirds present, they *then* are no more than authentications upon which the secretary of state acts when he endorses his final certificate; and certainly they can be entitled to no greater force, nor furnish any higher evidence of legislative action. At all events, they are acts anterior to the act of the secretary of state, which the statute declares shall be *conclusive* of the month and year when the bill becomes a law.

Does not this necessarily shut out all inquiry beyond the certificate of the secretary of state? And ought it not to do so? The consequences of permitting an investigation before a jury of the circumstances under which a law was passed, for the purpose of ascertaining whether it had been constitutionally passed, or, in other words, whether the members of the Legislature had kept their oaths of office and regarded the constitution, would seem to be dangerous, and certainly would, in many cases, be unjust, and might be fatal to the public peace.

The constitution declares that "A majority of each house shall constitute a quorum to do business (Const., § 3, 1 R. S. 43). The presence, therefore, of a majority is essential to the transaction of any business, and especially to pass a law. This constitutional requirement is just as explicit and binding as the one which requires the assent of two-thirds of the members elected to

each house, to a two-thirds bill. If our courts of law may inquire, by a jury, how a two-thirds bill was passed, in the like manner they may inquire how a majority bill was passed. And thus statutes, which may have been rules of action for years, and under which large amounts of property have been vested and numerous titles taken, may be in effect abrogated by a court and jury, and declared void. Can a principle with such a consequence be tolerated? The mere statement of it produces its condemnation.

If there is no reason for it to rest upon—much less is there any authority. I presume such an extraordinary investigation has never been witnessed in any country, where the distinction is recognized between statute and common, or written and unwritten law.

Besides—every bill, after being endorsed by the secretary of state, as required by the statute, is filed in his office and becomes a *record*. A record imports verity, and can only be tested by itself. As a general rule no inquiry in pais is permitted, which may destroy it. It stands or falls by itself. This rule, so just and reasonable, should secure us from exposure to the hazard of losing the protection of statutes we have lived under for years.

This point, it is true, does not directly arise on these pleadings, but a full discussion of the subject required its consideration.

We trust this court is satisfied of the truth and soundness of the three propositions which I have attempted to prove, viz.:

FIRST. That the *associations* authorized by our General Banking Law are not *corporations*.

SECOND. That if they are, the Legislature had power to pass the law in the ordinary way, by a majority vote; and

THIRD. That if the law required a two-thirds vote to pass it, such vote will be presumed to have been given.

In conclusion, the court will permit me to express an earnest wish, that they will find it consistent with their duty to announce their decision at an early day; and with permission I will mention one other fact, which I have been requested to state,\* to in-

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\* Isaac Carrow, Esq., of the city of New York, was present at the argument and made this request. He is largely interested in the Bank of Com-

duce the court to adopt that course. It is, that the Bank of Commerce have called in one million of its capital on the first of October next, a very large portion of which is to be paid by foreign shareholders. And I will add, on my own responsibility, that it must be a source of deep unhappiness to the high-minded directors of that bank to see large sums coming from Europe on the credit of their names for investment in the institution which they conduct, while a question like this is pending.

The country, and especially the mercantile community, have been agitated and afflicted for so many years by sudden and unexpected events connected with the enactment and execution of our laws, that their pursuits have become a burden and their spirits faint. They long for quietness and peace, and I can render them and my clients no greater service than to entreat this court to give them rest.

## APPENDIX.

The present seems not an unfit occasion to take a brief view of the powers possessed by, and of the restraints imposed upon, the associations authorized by the General Banking Law.

Their means and mode of action have been fully considered in the preceding argument, and although not corporations, it is obvious they are fully competent to conduct the most extensive banking operations with as great benefit to, and as little personal liability from, the shareholders as our incorporated banks. But unless my views of the act are entirely erroneous, they will prove decidedly more advantageous, both to the public and the shareholders, than the incorporated banks.

The Legislature has placed them on the broad principles of

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merce, and next to Samuel Ward, Esq., the President of it, took, as I understand, the most active agency in organizing it. These gentlemen are well known in this country and in Europe, as standing at the very head of the mercantile and financial interests of the United States; and how deeply mortifying it would be to have them, and others like them, placed in a position where they would be obliged to confess to their European correspondents, that no reliance could be placed on our institutions and laws.

free trade. They have unrestricted powers to bank, loan moneys, and deal in personal securities, in all ways permitted by the general laws of the state.

FIRST. "By discounting bills, notes, and *other evidences of debt*." This authorizes the associations not only to discount in the ordinary way, but to discount any chose in action—as a bond and mortgage, a simple bond, an agreement for the payment of money, an account stated—in a word, any legal engagement to pay money, or evidence of debt. All of which may be safely discounted by receiving assignments of them when the discounts are made.

SECOND. "By receiving deposits." The power on this subject being general, it of course includes the right to agree on the terms upon which deposits shall be received—with or without interest, with or without security, or in any other manner, or on any other legal condition the parties may think proper to make.

THIRD. By "buying and selling gold and silver bullion, foreign coins and bills of exchange." These are ordinary banking operations and need no comment.

FOURTH. By "loaning money on real or personal security." This is a broad power, and the same which is possessed by all the citizens of this state, and is not possessed—at least to the same extent—by the incorporated banks. It enables the associations to transact all the business usually transacted by trust companies, and even farther, to lend on an hypothecation of choses in action and goods and chattels.

This is a valuable power, and one which may be exercised with great benefit to the public, as it enables the associations, if they see fit to do so, to advance on any kind of property, real or personal. This would be a dangerous power if belonging to corporations and exclusive, but as it may be exercised by the whole community, in the form of these associations, it is harmless. It is only unrestricted trade.

BUT FIFTH. All these things may be done, "in the manner specified in their articles of association, and by exercising such incidental powers as shall be necessary to carry on such business." This is free indeed. The *manner* may be agreed on in their articles of association—that is, the manner of doing all these *kinds* of

business. It may hence, I think, be done by a board of directors—by a president and cashier, or by one; by branches or agencies, one or more. In fine, in *any manner* the interest or fancy of the parties may devise.

The associations may also exercise all powers incident to these various kinds of business. This leaves nothing unpossessed. The associations are untrammelled, as they ought to be, except by the general laws of the state. And one of the greatest benefits which the state may expect from them, arises from their liberty to deal in public stocks, which the incorporated banks have not. The Bank of Commerce has already done the state good service in this respect, and like services may be expected from the other institutions when their arrangements for business shall have been completed. This, too, will be found to be a source of great profit to the new institutions, which is entirely denied to the chartered banks; and will prove of immense advantage to the other states in the Union, as it will give them a market for their stocks.

All these advantages cannot be expected from the law until every question respecting its validity shall have been finally settled, active opposition from opposing interests ceased, and public confidence shall flow in a full and warm current upon the associations.

The people, however, after all, are the greatest gainers by the new system. They have a convenient and perfectly safe currency, and also free competition among lenders—the two great ends of banking, so far as the public at large is concerned.

The associations will, moreover, be stable. They are out of the reach of the fluctuations of popular legislation. Every association is a contract between the parties, which is protected by the Constitution of the United States, which prohibits a state from passing a “law impairing the obligation of contracts.” These associations, therefore, must continue for the periods fixed in their articles of association, and enjoy the powers given by the statute. A repeal of the law will only prevent any more from being organized. Thus we have a system of banking permanently settled, and no man can count the many blessings it will be the means of conferring on this people.



## NOTICES OF THE PRECEDING ARGUMENT.

While on the subject of our General Banking Law, we will mention that the constitutionality of this law was discussed before the Supreme Court, at its July term, held at Utica, in a suit brought by Anson Thomas, the president of the Bank of Central New York, *vs.* Samuel D. Dakin. We understand, not the least doubt is entertained of the result. The court will unquestionably decide that the law is constitutional.

Samuel A. Foot, Esq., of New York, who made the closing argument in favor of the validity of the law, has during the present month, which he passed in this village, written his argument in full, which we have had the pleasure of printing and publishing. It is for sale at the bookstore of Mr. J. N. Bogert, Main street.

Mr. Foot, in the course of his argument, has given a full history of the origin and passage of the statute, and in notes, brief sketches of the character of several gentlemen who were either its prominent supporters or have approved of it since its passage. He has also added an Appendix, containing a concise exposition of the powers which the law confers on the banking institutions organized under it, and the advantages which they are supposed to have over the old banks. Believing it may be useful to those who are interested in the new institutions, we have published it in another column.—*Geneva Courier*, of August 27, 1839.

The Appendix was published accordingly in another part of the same paper.

At the last July term of the Supreme Court at Utica, the question of the constitutionality of the General Banking Law of this state, passed the 18th April, 1838, was argued. The argument of the Hon. Samuel A. Foot, of this city, on that occasion, in favor of the constitutionality of the law, is pronounced by those who heard it to have been one of great power and ability. We are glad to perceive that it has been published, under the eye of the eminent advocate, together with an Appendix, illustrating the powers possessed by, and the restraints upon, the associations authorized by the General Banking Law.—*New York Daily Whig*, of September 4, 1839.

This is the title of a pamphlet containing the substance of the argument of Samuel A. Foot, Esq., of the city of New York, before the Supreme Court, at the last July term, in the cause of Anson Thomas, president of the Bank of Central New York, against Samuel Dakin. This suit was commenced by the bank upon certain drafts amounting to about \$5000 drawn by Dakin, of which the bank became owners, and which were protested for non-payment. On a demurrer to the declaration, the question arose as to the constitutionality of the statute usually called the General Banking Law, under which the Bank of Central New York was organized. It was contended on the part

of the defence that these associations are *corporations*, and that consequently the statute is in violation of the 9th section of the 7th article of the constitution, which provides that the assent of two-thirds of the members of each branch of the Legislature shall be requisite to every bill creating any body corporate.

In support of the law the following three propositions were advanced by the counsel:

1st. That the *associations* authorized by the General Banking Law are not *corporations*.

2d. That if they are, the Legislature had power to pass the law in the ordinary way, by a majority vote.

3d. That if the law required a two-thirds vote to pass it, such vote will be presumed to have been given.

The argument of Mr. Foot in support of the truth and soundness of these propositions is able, lucid and satisfactory, worthy of his high reputation at the bar, and equal to the emergency which called it forth. Seldom, if ever, has the history of judicial controversy presented a case involving such an immense amount of property and such vital interests of the community. If this law is not constitutional, it is of course void, and the banks formed under it have no legal authority to carry on business. Every one will see at once the immeasurable evils which would ensue. These cannot be more forcibly depicted than in the words of the learned counsel himself:

“ If the defence prevails,” &c.

—*Albany Evening Journal*, of 14th September, 1839.

A pamphlet of 104 pages has just made its appearance, entitled “An Argument in favor of the Constitutionality of the General Banking Law of this State, delivered before the Supreme Court at the July term, 1839, by Samuel A. Foot, of the City of New York, Counsellor at Law.”

From a very cursory glance at this Argument, we are satisfied that it presents, in a clear light, the strong points in favor of the constitutionality of the subject, as well as the reasons against disturbing by ill-advised attacks, the policy of a growing country, in inviting, by all proper means, the introduction of foreign capital.

We shall take another opportunity to refer to this valuable argument.—*New York American*, of September 6, 1839.

It will be recollected, probably, that we have heretofore mentioned the discussion which took place at Utica before the Supreme Court at the July term, involving the constitutionality of this law.

The great amount of property dependent upon the decision of the question, the importance of maintaining the faith of the state, pledged to domestic and foreign capitalists, and the great principles of constitutional law and legislative powers discussed and to be disposed of, gave to the argument an interest which perhaps no previous case ever before our court attracted.

It will be remembered that high commendations were bestowed on the

arguments of the counsel who maintained the constitutionality of the law, and particularly upon the one made by S. A. Foot, Esq., of this city, and senior counsel, who more elaborately discussed the questions arising in the case, and the great principle to be decided. We have heard many professional gentlemen speak of this forensic effort of Mr. Foot, and all agree in opinion that for depth of reasoning, legal research, and clearness and power of demonstration, it has not often been excelled in our courts.

The interest excited by this discussion has widely extended, and the public have been very anxious to obtain possession of the precise points raised and the reasons urged in favor of the law. Mr. Foot has gratified this laudable curiosity by writing out his argument for publication. We have read the pamphlet with unusual pleasure, and commend it to the careful attention of all who are interested in the new banks. No man, we venture to say, can fail to gain from it an entire conviction of the power of the Legislature to pass the law, and that the institutions organized under it rest on a basis not to be shaken. The pamphlet not only contains the argument of the counsel mentioned, but brief and interesting notices of the several gentlemen who matured this law and have given to it their approval, and an Appendix which sets forth clearly and fully the advantages of the institutions organized under this act, and the benefits conferred by it.—*Commercial Advertiser*, of 17th September, 1839.

Our readers are aware that the question came up in a case of assumpsit between the president of the Bank of Central New York and Samuel P. Dakin, the defendant, in a demurrer admitting the assumpsit of \$5000 in three drafts, but denying the constitutionality of the law upon which the president of the bank maintained his action. Our readers are also aware that in this state a two-thirds act is necessary to create a *corporation*. The defendant maintained the new banks were corporations, and also that a general two-thirds law creating corporations, *ad infinitum*, was unconstitutional. In these positions he was in fact backed by the official opinions of Messrs. Beardsley and Bronson as attorney-generals of the state. The action which Mr. Foot maintains, with a good deal of research and with powerful logic, is grounded upon the idea—

1st. That these banking associations are not corporations.

2d. If they are, the restrictive clause of the constitution does not prohibit the Legislature from passing a law, authorizing an indefinite and unlimited number of volunteering associations.

3d. If it did, such a general act may be passed by a two-thirds vote, and this statute having passed through the regular forms of authentication and appearing on the statute book, must be presumed to have been passed by the requisite constitutional vote.

The first branch of this argument is maintained, we think, with pre-eminent ability, but the two last branches it was found more difficult to support.

The pamphlet, with the argument and Appendix, contains over 100

pages. It is a highly instructive article upon our banking legislation, and the processes of banking that led to it.—*N. Y. Daily Express*, Wednesday Morning, September 25, 1839.

In the case of Anson Thomas, president of the Bank of Central New York, against Samuel Dakin, the *constitutionality* of the General Banking Law was attacked. The case was argued before the Supreme Court at its last July term in Utica. The bank held and owned the drafts of the defendant, which he did not pay at maturity. This suit was brought to enforce their collection; and upon a demurrer to the plaintiff's declaration, the constitutional question was raised.

Ward Hunt, Esq., contended, in support of the demurrer, that the statute is unconstitutional, because the associations which are organized under it are *corporations*; and as the statute provides for the creation of an *indefinite* number of associations, that it is therefore in violation of the ninth section of the seventh article of the constitution, which is in these words:

"The assent of *two-thirds* of the members elected to each branch of the Legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes, or creating, continuing, altering, or renewing any body politic or corporate."

The case was ably argued on the part of the bank and in favor of the constitutionality of the law, by Samuel A. Foot, Esq., of this city, and C. P. Kirkland, Esq., of Utica. We have not seen the argument of Mr. Kirkland, but we understand it was very able, and was regarded as perfectly conclusive.

The argument of Mr. Foot has been published in pamphlet form, and is now before us. After rapidly glancing at the importance of the question, involving, as it does, wide and extended interests, and putting at hazard the many millions invested in these institutions upon the faith and security of this law, Mr. Foot lays down the propositions, first, that these associations are not corporations, because they have not the distinctive *indicia* which designate and mark an aggregate corporation, and do not possess the essential requisites of a corporation; and furthermore, that it is manifest from the act itself that the Legislature did not intend to constitute them corporations. Secondly, admitting the associations to be corporations, still the act is constitutional, because the clause in the constitution is not, and was not intended to be, applicable to a *general* law, which should authorize ALL our citizens to incorporate themselves to carry on any particular business; but on the contrary, it was intended by that section to impede the passage of separate acts of incorporation, and to check the exercise of the sovereign power in granting monopolies and exclusive privileges for the benefit of the few.

But admitting the constitutional restriction to be applicable to a *general* act of incorporation—still Mr. Foot contends, in the *third* place, that such a law may be passed by a two-thirds vote, and this law will be *presumed* to have been so passed. In the course of his argument, Mr. Foot sketches the history of the Restraining Act, and shows that it has been the prolific cause

or source of the evils it was designed to prevent—instead of restraining exclusive grants, it has had directly the opposite tendency, by enabling a few men in each branch of the Legislature to control its action, and force through measures as unjust as they were unwise. There is no doubt, we learn, that the Supreme Court will decide, at its next term in October, in favor of the constitutionality of the law.—*Journal of Commerce*, Wednesday Morning, September 25.

We have received a pamphlet, containing an argument in favor of the constitutionality of the General Banking Law of this state, delivered before the Supreme Court, at the July term, 1839, by Samuel A. Foot, Esq., and recently published, which embodies much talent, and evinces deep research and profound legal knowledge.

The subject which is here so learnedly discussed, imperatively called for a display of the highest order of talent, as well on account of the important pecuniary interests involved, as from the disastrous results which would inevitably flow from the adjudicated illegality of a measure which has already become so identified with the existence of our credit at home and abroad.

The preliminary remarks of the learned author are characterized by soundness and elegance; illustrating in a forcible manner the great inconvenience and injury which must arise, in even doubting the constitutionality of the principles upon which our banks, under this law, are based, and in adverting to the possibility of their being declared a violation of the constitution. The immense amount of losses which would then follow, the litigation which would ensue, and the financial derangement and commercial prostration necessarily resulting, were vividly presented and eloquently urged.

Connected with the subject of this argument, the natural and constitutional right of every citizen to exercise the privilege of free banking is ably considered and clearly established; and a history of the restraints imposed by law upon private banking is given, and their tendency and operation examined.

The ground upon which the constitutionality of this law was questioned being that the associations formed under it were corporations, and that it required two-thirds of the Legislature to concur in their creation, it became necessary, in the course of this argument, to show in what the legal and essential requisites of a corporation consisted. In elucidating this portion of his argument the author evinces a clearness of arrangement, an originality of thought, and a familiarity with legal principles, which mark the finished and well-read lawyer.

In examining this branch of his subject, judicial decisions which are applicable swell the authority which the strength of his reasoning affords. The rights, franchises, and privileges of corporations, as they existed at common law, are clearly pointed out, and the varied alterations and modifications introduced by statutory provisions are ably considered.



A history of the passage of this law through our Legislature is presented by the author in support of his argument. The objections which were then made, the modifications it underwent, and the care which was bestowed in framing its provisions, are urged to show that every constitutional objection was intended to be met and obviated previous to its final passage.

The importance of the principles contained in this argument, with reference to the subject to which they are applied, and the necessity of their being understood and rightly appreciated by the merchant and man of business, to whom they are of peculiar interest, form a sufficient recommendation for its perusal.

The creation and operation of banking associations organized under the provisions of this act, form a new and distinct feature in the financial history of this country, and open a still wider field for commercial enterprise; and it is of the deepest importance to all who are desirous of embracing the opportunities which are afforded by this law, for the profitable investment of capital, to obtain a thorough knowledge of its legal construction and effect. So short a time has elapsed since the passage of this act, that few judicial decisions have been made calculated to settle the rights and determine the liabilities of associations erected under its provisions; and the final decision of the case in which this argument was delivered will settle all questions as to its constitutionality.

So far as the state of the pleadings would permit, the Supreme Court, at the October term, decided the points discussed in this argument.

The court expressed the opinions—*First*, That associations formed under the General Banking Law are corporations—*Second*, That the assent of two-thirds of all the members elected to each branch of the Legislature was necessary to the passing of the act—and *Third*, That if passed by a two-third vote, the act is constitutional.

On the last point, Mr. Justice Bronson was not prepared to concur; but on the other questions, the opinion of the whole court was expressed.—*Hunt's Merchants' Magazine and Commercial Review*, December, 1839.

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No. XXIV.—VOL. 1, p. 195.

*Fulton Ferry.*

There appears to be no end to strife about the ferries between this city and Brooklyn. The leases of the Fulton and South Ferries expire on the 1st of May next, and already the din of battle begins to assail our ears. Fortunately these contests are confined to paper, and the public may be thankful if they do not result in

any serious injury to the present facilities for intercourse between the two cities.

If we understand the matter rightly (and we have taken some pains to do so), the present difficulty arises out of an effort made by those who own property in the south part of Brooklyn, and are interested in keeping up the South Ferry, to tax the central and compact part of the city for that object. This is resisted, and very naturally, by those who will be obliged to pay the tax without receiving any equivalent.

The present lease of the Fulton Ferry is held by a large association of gentlemen, who united two or three years ago and bought out the old monopolists for the purpose of placing it on a footing which would furnish better and more satisfactory accommodations to the public. They raised a capital of about *one hundred thousand dollars*, and in expectation of having their lease renewed, laid out their money freely in improving the ferry. They are now in debt about forty thousand dollars; and if they do not receive a renewal of their lease and are compelled to close their business on the 1st of May, they will sustain a loss of twenty-two thousand dollars and upwards.

The South Ferry is in a still more unfortunate plight. The association who have the lease of it are confessedly insolvent; that is, their property is not worth the amount of their stock and debts by seventy thousand dollars—which amount they have lost in the short space of three years; and they admit that their ferry cannot be kept up for the coming year without a loss of at least ten thousand dollars, and those holding the lease of the Fulton Ferry think it cannot be done without a loss of at least twenty thousand dollars.

In this state of things, it of course seemed very desirable to those interested in maintaining the South Ferry to attach it to something which could sustain it, and they started the idea of leasing the two ferries together and to the same persons. This took with the committee of our corporation, and they have determined accordingly, and offered a lease of the two ferries to the Fulton Association. That Association, finding that the two ferries cannot be supported and give the necessary accommodations to the public at the Fulton Ferry without a very great annual loss, have declined the proposition. Whether any individuals or asso-

ciation of the requisite ability can be found to take a lease of the two ferries, or whether they will fall back into the hands of the corporation, seems questionable. It certainly is not just to tax one part of the community for the benefit of another. Such a measure is a direct and palpable violation of our bill of rights. Why should those whose business and convenience require them to pass at the Fulton Ferry, pay a high toll to support a ferry for the benefit of a few owners of property in another section of the city.

If such a step is taken to aid the south part of Brooklyn, there is the same reason for assisting every other outer section of that city in the same way; and, indeed, we have heard, that the inhabitants of the Wallabout have asked the corporation of this city to establish a ferry from the Wallabout to Peck slip, and attach it to and compel the Fulton Ferry to sustain it.

It strikes us that this is a very unwise, as well as unjust, mode of legislation. If the South Ferry cannot sustain itself at present, we do not see why our corporation do not take the usual course for establishing a new ferry, and that is, to offer a lease at a nominal rent for so long a time as to induce capitalists to come forward and take it. This is the first time we ever heard of our corporation levying a tax, directly or indirectly, to establish or sustain a ferry. It really looks as if there was some controlling interest which does not show itself. This determination, however, to unite the two ferries, and oblige one to support the other, has only been made by a committee, and we have entire confidence that our Whig corporation, being composed of good men and true, will settle the matter rightly.

NEW YORK.

—*Journal of Commerce*, of March 12, 1839.

No. XXV.—VOL. 1, p. 200.

*A General Bankrupt Law.*

Our reporter has furnished us with the following sketch of Mr. Foot's remarks before the Philanthropic Law Association :

Mr. Foot commenced his remarks by observing, that he presumed the committee of the Association, in inviting him to address them, was not so much to obtain an agreeable entertainment for the evening, as to elicit his views on the subject of a bankrupt law, in the hope that some suggestions might be collected which would aid in accomplishing the great design they had in view. To this end he should direct his observations.

Mr. Foot then proceeded to comment upon and illustrate the following topics :

1. *The time when* the subject of a bankrupt law should be pressed on the attention of Congress. That time, he thought, above all others, was the next session. Then party strife would be less violent and active. The party now in power must, and doubtless would, feel disposed to yield to the late decision of the people upon their measures ; and the party to assume power on the 4th of March next would not consider themselves responsible as a party for the acts of the present Congress, and hence both would be disposed to meet this great question on its merits. For these and other reasons which he urged, Mr. Foot strongly recommended the friends of the measure to direct their attention to next session of Congress.

2. Mr. Foot mentioned, that it had been supposed by many that the Constitution of the United States, which prohibited the passage of an "*ex post facto* law, or law impairing the obligation of contracts," might embarrass the enactment of a bankrupt law which should operate upon contracts already made. But this was an error. The provision of the Constitution is, that "*No state shall pass any ex post facto law, or law impairing the obligation of contracts.*" The restriction is solely on state legislation ; and besides, it has long since been decided, that *ex post*

*facto* laws are only applicable to criminal cases. Congress is consequently at full liberty to exercise the power conferred by the Constitution, "to establish uniform laws on the subject of bankruptcies throughout the United States."

3. Mr. Foot took a full view of the financial measures of the Government for the last twenty years, and showed that the increase of the banking capital from 1830 to 1836, and the consequent expansion of the circulating medium, had created the spirit of speculation and overtrading which had prostrated the business and energies of the country; that the action of the General Government, and especially its attack upon, and ultimate destruction of the United States Bank as a national institution, had produced this unnatural increase of bank capital and circulating medium; and hence a strong and imperative obligation was imposed on the Congress of the United States to relieve the unfortunate individuals who had been overwhelmed by this factitious state of things, and restore the active and business talent of the country to its former usefulness. One of the most efficient legislative acts to accomplish this humane and just measure was, in the opinion of Mr. Foot, a bankrupt law founded upon wise principles.

4. Mr. Foot contended that the interests of the country required the passage of such a law. The late revulsion in business had fallen upon and overwhelmed the life and spirit of the nation. It had struck down the men of business—the men of activity and talent. Those who spoke, felt, and acted—not the drones who were living in idleness, but those who rose early, moved quickly, and gave animation to the community. Those who not only carried forward the great temporal enterprises of the country, but who sustained our public and private charities—who fed the poor and spread the gospel. This portion of the nation, of all others, should receive the fostering and paternal care of the Government.

5. The cause of sound morality demanded the action of Congress on this subject. The families of the unfortunate debtors must and would be fed and clothed. That could be done by the earnings of those upon whom they were dependent. This produced a conflict between the wakeful and persevering creditor and the indebted husband and parent. While the latter would



be willing, and in most cases anxious, to pay his just debts, yet his wife and children must have food and raiment. This obliges him to resort to devices to cover his earnings or the small remains of his shattered fortune, and the struggle often ends in converting the kind husband and affectionate parent into the desperate criminal.

6. Mr. Foot examined the relations of debtor and creditor, and showed that the interests of the latter should be consulted in a wise system of bankruptcy, and that the Association he was addressing should aim to accomplish that object. That a law, commonly called a "*Jubilee Act*," could not, in his opinion, be obtained even if desirable. That the true course was to call for a law which would promote and protect the general interests of the country. That such a law would secure property, render its possession more stable, and its enjoyment more certain. It would command the approbation of the nation, and early receive the sanction of Congress.

7. Whether such a law should embrace corporations or not was a disputed point. But of this Mr. Foot felt assured, that if Congress did not make some regulation to protect the country against the frauds and mismanagement of corporations, the states that had not already done so, certainly would at an early day. He did not therefore consider it very important whether a general bankrupt law applied to corporations or not.

8. Mr. Foot then discussed some of the leading features of a general bankrupt law, and showed that it ought to be so framed as to be humane to the honest and unfortunate debtor, and rigid and efficient against the fraudulent one. That it should contain provisions for an early and economical distribution of the debtor's property, and make it his interest to deliver over the whole of it to his creditors.

In conclusion, Mr. Foot offered the following resolutions :

Resolved, 1st, That it is practicable to frame an uniform and general bankrupt law, that shall relieve the honest debtor who has given up his all to his creditors, and that shall at the same time protect the just rights of the creditor.

Resolved, 2d, That the time has gone by when incarceration within the four walls of a prison was the penalty of misfortune, and the time has now arrived when the Congress of the United

States should perform the high duty enjoined by the Constitution, and pass "uniform laws on the subject of bankruptcies throughout the United States," and thereby not only restore thousands of our worthy citizens to usefulness and their just rights in the pursuit of happiness, but also provide a wholesome restraint upon the buoyant and returning enterprise of the country.—*N. Y. Express*, of November 21, 1840.

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No. XXVI.—Vol. 1, p. 206.

*A Bankrupt Law.*

Judging from many of the petitions to Congress which pray for the passage of a *general* bankrupt act, and the discussions in the public journals for and against a *general* law, one would suppose that Congress had power to pass a special or limited bankrupt act, containing partial and discriminating provisions. This is an error. No such power exists. The Constitution of the United States contains but a single provision on the subject, which is in the following words:

"The Congress shall have power—4th. To establish uniform laws on the subject of bankruptcies throughout the United States."

Whatever law, therefore, is passed, must be general, and uniform in its provisions throughout the United States. It must operate alike in each state of the Union, and be administered in the same manner.

The nature, object, and importance of a bankrupt act are not generally understood. It is, in the main, regarded as a convenient and effectual mode of enabling a man, unfortunate in business, to obtain a discharge from his debts. But this is a very limited and imperfect view of it. No one, however gifted, can foresee the consequences of such a law. It will influence the business transactions and affect the property of a very large majority, if not of the whole, citizens of the United States, and will bring weal or woe upon the country, according as it is founded or not on wise and enlightened principles of justice and humanity.

The humane spirit which is abroad in the civilized world, and especially in this country, together with our tender and feverish regard for personal liberty, has utterly condemned imprisonment for debt, and with a strong and almost universal expression repudiated the principle of holding an unfortunate debtor bound to appropriate his future earnings to the payment of debts long since contracted, and already due; and, under the influence of this spirit, the liberal and benevolent principle has been adopted of discharging a debtor from his liabilities, in case his inability to meet his engagements has arisen from misfortune, and he will fully and honestly surrender his property for the benefit of his creditors. There are a few men in the community who still resist this benign feeling in favor of the unfortunate, and insist upon holding them in their power until, by future efforts or some other means, they satisfy in full their demands. A bankrupt law ought to settle, upon just and humane views of the rights and duties of debtor and creditor, these great questions of conflicting interests. The enactment of such a law is one of the highest exercises of sovereign power. The Government can adopt no measure which would more fully exhibit its supremacy, and show how entirely at its mercy lie the most sacred rights of the citizen. A bankrupt act does not regulate future interests, or prescribe a prospective rule of action; it operates directly and powerfully on property already acquired; it deals with *vested rights*; it divests the debtor of his property, and annuls contracts and obligations belonging to the creditor; it gives the property of the debtor to his creditors without his consent, and discharges contracts held by the creditor, and obligations due to him, also without his consent.

The framers of our Constitution wisely vested this power in the Legislature of the Union, and prohibited the states from exercising it. The nature of the power, and the language by which it is conferred on Congress, show that it belongs exclusively to that body. No other legislative body can pass laws which operate throughout the United States. When, therefore, the Constitution declares that Congress shall have power to "establish *uniform* laws on the subject of bankruptcies *throughout the United States*," it substantially declares that Congress only shall have such power. The Supreme Court of the United

States have also expressed an opinion that this power belongs exclusively to Congress. The states, moreover, are prohibited by the Federal Constitution from passing any laws "impairing the obligation of contracts," which a bankrupt law does most effectually. The only guard which appears to be placed upon the exercise of this high power, is the constitutional requisition that laws passed in pursuance of it shall be uniform throughout the United States. This uniformity protects the community against partial legislation, and, if a bankrupt act is passed at all, insures the passage of a just and general one.

The great object to be obtained by such a law is a full and fair disclosure and surrender by the debtor of his property, and an equal distribution of it among his creditors promptly and economically made. A good system of bankruptcy, all must admit, is a blessing to an active people extensively engaged in various pursuits, which cannot be successfully prosecuted without entering into large engagements. Misfortunes will come, and no human prudence can guard against them; but the laws of the country should mitigate their severity as far as is consistent with the rights of creditors.

The wisdom and talents of the nation ought to be called into exercise on this truly important subject, and every citizen who can make a useful suggestion ought to do it promptly. We propose to contribute our mite to this great treasury, and if we accomplish nothing else, show at least that our hearts are engaged. In the few pages which we can at present devote to this subject, we propose to give briefly our views of the general features of a bankrupt law for this country. They may be regarded by some as crude and visionary, but of this we feel assured, that they are just and humane, and, if we do not greatly err, they are also practical. We fully believe that a law framed in accordance with them would protect the rights of the creditor, and also relieve the unfortunate debtor; that such a law could be administered promptly, economically, and advantageously to the public and the parties interested.

All bankrupt laws must necessarily require the bankrupt upon oath, and under severe penalties, to give a full and true account of his property, and surrender it for the benefit of his creditors. A strict and honest compliance with this requisition strips the

unfortunate debtor of everything, even of the means to supply himself and family with the necessities of life. There are only a few men in the community whose moral principles are so pure and firm that, in view of such consequences, will yield implicit obedience to the law. Hence, in a very great majority of cases, property will be concealed, and fraud and perjury committed to render the concealment effectual. A man who, under other circumstances, would blush at the very thought of crime, will venture into its dark embrace, when it appears to be the only mode left him of feeding and clothing his wife and children. No law can be executed which is based on such inhumanity. It is, besides, a positive evil. It promotes crime—drives men of good feelings and high character to extremities, and from thence to criminal practices.

The *first feature*, then, we would engraft upon a bankrupt law, should be a provision allowing the bankrupt, under the direction of a proper officer, to draw from his property, surrendered for the benefit of his creditors, a sufficient sum to support himself and family for a few months. This would give him the means of living until he could find new employment. His creditors also would be gainers by this arrangement. For the amount of the allowance would be far less, in nineteen cases out of twenty, than the debtor himself would take for the same purpose, if driven by the severity of the law to help himself.

*Second.*—Few men, as we have already said, will surrender everything to their creditors. In most cases the failing debtor will not only withhold sufficient to meet present wants, but will conceal and lay aside a fund to recommence business with. The idea very generally prevails, and is too often acted upon, that a failing debtor should hold something back with which to help himself, something to begin the world anew upon. Under the influence of this false principle, large amounts of property are constantly withheld from creditors, and will continue to be while man is what he is. No laws, however severe, have yet been able to restrain him. The English bankrupt system contains as full provisions as human ingenuity can invent for the discovery of the bankrupt's property, and severe penalties for its concealment, yet there are frauds practised continually under that system by concealing property from creditors, and those frauds too often



rendered successful by perjury. What does the cause of sound morals, wise legislation, and the interest of creditors require under these circumstances? The answer is—Make it the interest of the bankrupt to be honest. To accomplish this, let the law provide that he shall receive a liberal percentage on the dividends made upon his estate, and let that percentage be increased in proportion to the approximation of the dividends to the payment of his debts; and if his debts are paid in full out of his estate, give him a percentage which shall reward his integrity, and enable him to recommence business under favorable auspices.

This regulation will produce another result highly advantageous to creditors. It will induce their failing debtors to surrender in the early stages of their embarrassments, and before making heavy sacrifices of property to sustain themselves for a time, in the cherished but vain hope that there may be a favorable turn in their affairs, which will enable them to meet their engagements and preserve their credit.

*Third.*—The assignees of the bankrupt ought to be allowed, if they think proper, to employ him as their agent in closing his estate, and allow him a reasonable compensation for his services. He would not, of course, be thus employed unless his integrity and capacity were unquestioned; and, if honest and capable, who so fit an agent of the assignees as he? Besides his better acquaintance with his property and debtors, and the anxious desire which, like every upright man, he would naturally feel that his debts should be paid, he would have a direct personal interest, on account of the percentage before proposed, in making his estate as productive as possible. Another benefit, but of a moral and humane character, would also flow from employing the bankrupt in the way proposed. It would furnish him with active and reputable occupation at a time of distress, depression, and anxiety; at a moment when, of all others, employment would be a blessing. The compensation, too, would not only aid him in providing for the wants of himself and family, but encourage him to make other and greater efforts to surmount his adverse fortune.

*Fourth.*—The law should authorize the assignees to settle all controversies concerning the bankrupt's estate by reference. This would prevent protracted and expensive law-suits. The English bankrupt system is a terror to creditors on account of the enor-

mous expenses of administering it, and those expenses are mainly incurred in litigations. If we have a bankrupt law, let it, at least, be economically administered. Do not permit the assignees and their favorite professional advisers to receive the largest dividends from the estate, as is the case in England; but while both are liberally rewarded for their services, let us improve upon the English plan, and terminate our controversies with less professional labor and expense.

*Fifth.*—The whole estate of the bankrupt should be closed and a final dividend made among the creditors within two years. This, we think, would be a decided improvement upon every system of bankruptcy with which we are acquainted. In England, the estates of bankrupts often remain unsettled for ten, twenty, and more years; and even in this country there are estates of bankrupts yet unsettled which went into the hands of assignees under our bankrupt act passed in 1800 and repealed in 1803. It will doubtless be asked, How can a final dividend be made, if there are outstanding and unsettled claims? The answer is obvious. Require the assignees, at the expiration of two years from their appointment, to sell at auction, after full notice, all the effects of the bankrupt, whether settled or unsettled, and permit the creditors to become purchasers. The estate would then be closed, and a final dividend could be made.

*Sixth.*—A bankrupt act ought to contain a provision that any creditor may commence a suit against the bankrupt at any time after he is discharged, however long, and recover a judgment against him for the full amount of the principal and interest of his demand, provided he can prove that the bankrupt concealed any of his property from his creditors, or committed any other fraud in obtaining his discharge. On the recovery of such a judgment the court should be required to pronounce the discharge void, and all the debts of the bankrupt should revive against him, and he should be prohibited from ever having again the benefit of the bankrupt act.

*Seventh.*—Such an act ought also to contain strong provisions for punishing fraud in obtaining a discharge under it, so that the debtor, while invited by humane considerations, on the one hand, to make an honest surrender of his property to his creditors, might, on the other, see nothing before him but ignominy and imprison-

ment if he attempted to defraud them. It would not, we apprehend, be too severe to declare a fraudulent concealment of property a felony, punishable by imprisonment for several years, where there was so little excuse for crime, as there would be under the kind provisions before proposed.

There are several other topics which we should have been pleased to offer some remarks upon at this time, if our limits would permit, especially the policy and justice of including corporations in a bankrupt act, and perhaps we may present our views on that subject in a future number.

S. A. F.

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No. XXVII.—VOL. 1, p. 211.

*Purity of the Ballot.*

MR. FOOT'S SPEECH BEFORE THE SUPREME COURT IN THE MANDAMUS CASE.

Mr. Foot commenced his argument by remarking that no person born on American soil, who loved his country, respected her institutions, and was attached to the great principle that the Will of the People is the Source of Power, could rise to discuss the questions before the court without feeling deeply anxious to discharge his whole duty. An advocate who rightly appreciates his obligations, knows that on such questions his duty to his client is unimportant in comparison with that which he owes the country and the court. To his client, he is bound to strive for a judgment in his favor—to his country, to maintain the great principles of civil liberty and the high sanction of her laws—and to the court, to furnish them with all the light he can command from reason and authority on the subject under consideration; and in respectful, kind, and earnest language, warn them against all sources of error to which he fears they may be exposed. Mr. Foot said he should endeavor on the present occasion to fulfill his high trust, but he was well aware of his inability to meet its demands.

Mr. Foot then proceeded to show the danger to our institutions from allowing any fraudulent devices in canvassing votes to defeat the will of the majority, and disappoint the choice of the electors; the importance of decided and immediate action by the judiciary for the correction of every such abuse, and the necessity of a prompt and unflinching discharge of duty by the court in the present instance.

He then briefly reviewed the evidence, and contended there was no legal proof that the votes of the first district of the sixth ward could not be counted, as the certificate of the ward inspectors containing that statement was not verified by oath, and it was not a fact which they were authorized by statute to return; that statement, moreover, was disproved by the testimony of several witnesses. The case before the court was then simply this: Sinclair, the district inspector of the first district of the sixth ward, who was delegated to take the returns of that district to the Board of Ward Inspectors which met the next day (13th April), at noon, violated his trust and suppressed the returns. He and his associate, who was of the same cast of politics with him, being a majority of the inspectors of that district, united on the 14th of April in making the false certificate, that they could not return the votes given in that district for aldermen, &c. On this certificate the mayor, with full returns from the other three districts of the ward before him, refused to swear in the alderman and assistant alderman; and the recorder, on their application to him, administered the oath to them. Then followed separate organizations of the boards of aldermen and assistant aldermen, the appointment of a clerk of the board of aldermen by those who acted with the alderman elect of the sixth ward, and a clerk of the board of assistant aldermen by those who acted with the assistant alderman elect of that ward. To both of these clerks the mayor refused to administer the oaths of office, and also to the assessors of the sixth ward.

He took the high ground that the boards appointing these clerks were illegal assemblies, which he would not recognize, and prohibited them from occupying the room of the aldermen and assistant aldermen in the City Hall. He adopted the opposing organizations, being of the same politics with himself.

and insisted that Shaler, the assistant alderman of the sixth ward for the past year, held over.

Mr. Foot said this undisguised attempt to suppress the voice of the people, and trample upon the rights of the electors of the sixth ward, was a mournful exhibition of the extent to which an unchastened lust of power and place would carry men who, out of the reach of its influence, fulfilled reputably the ordinary duties of life. It had inflicted a wound to the vital principle of our system of government, and it must be healed. This court had the power, and he was confident they would apply the remedy. He was peaceful, his spirit was peaceful, and he hoped humble; but he must say, in the soberness of truth, and with the firmness of manly resolve, that if he did not believe the court had the power and the will to redress this wrong, he should consider it his duty as one among his orderly and patriotic fellow-citizens to strip the misguided chief magistrate of our city, by such means as they could command, of the powers which, probably more from error than design, he was abusing by applying it to effect the most dangerous purposes. For if the administration of the law is so feeble that an outrage like this can pass unredressed, there is an end to government, and life and property are without protection. But he had no such fearful apprehension. He knew and confided in the intelligence, firmness, and purity of the tribunal before which he stood. He should discuss the questions of law which arose in the case with a perfect assurance that they would be rightly decided.

Mr. Foot first stated and enforced the proposition, that the election confers the office on the candidate and not the returns of the canvassing officers. Their certificate is only evidence of the election, which is perfect when the last ballot is deposited; and if that evidence is shown to be false or fraudulent, other proofs may be resorted to. Mr. Foot cited in support of this proposition, in addition to the authorities referred to by his associates, the case of *The People vs. Tibbetts* (4 Cow. R. 358), and *Rust vs. Gott* (9 Cow. R. 174).

*Second.* That the loss of the votes of a ward or town does not vitiate the election of a city or county; nor indeed does the loss of the votes of any small section of country destroy the election of a large district. This is a well-settled principle in representa-



tive government, and has been universally recognized and acted upon in this country. On this principle, if the votes in the first district in the sixth ward had been lost, the election would have been complete by those given in the other districts. But on no principle, nor by any rule of action except brute force, can a fraudulent suppression of the returns from a small part of a whole town or ward defeat the election. This is too obvious to require illustration. It is evident, therefore, that Mr. Crolius was elected alderman, Mr. Atwell assistant alderman, and Messrs. Heath and Roome assessors of the sixth ward; and that upon the returns as made, it was the duty of the mayor to administer to them their oaths of office. The excuse he makes for his refusal is, that by the old statute of 1813 (2 R. S. 247, sec. 11), the ward inspectors ought to have certified and declared who had the majority of votes for each respective office; and because they did not so certify, the candidates were not elected, although the returns before him showed the number of votes given for each. How absurd! one can hardly avoid saying, how silly! But this old law has been more than once repealed by enactments on the same subject inconsistent with it. 1st. By the act of April, 1822 (Laws of 1822, p. 246). 2d. By the amended charter, passed 7th April, 1830 (Kent's Charter, 99, 100, sec. 4). 3d. And lastly, by the act of 8th April, 1842.

By the first section of that statute, the common council are "authorized to pass such ordinances as to them may seem meet, for providing for the time and place where the polls shall be held, &c. And also for the inspectors in each election district in the several wards in said city, to meet, add together, compute, and return the votes given to each person voted for in the several districts of the said wards, in the manner now required by law.

In pursuance of the power conferred by this statute, the common council passed an ordinance on the 11th of April last, specifying the duties of the district and ward inspectors at the then approaching election, and requiring the district inspectors, on the evening the polls were closed, "to add together, compute, and make out the returns of votes for each person voted for in said district;" to file one copy with the clerk of the county, and depute their chairman to deliver another copy to the board of ward inspectors, and with the chairman from the other districts to

form such board. The duty of that board is defined by the ordinance to be, to meet "at noon of the day succeeding the election, *add together, compute, and return all the votes given in the ward for each person voted for in the several districts of such ward.*

Not one word is said in the ordinance about a certificate or declaration who had a majority or plurality of votes, the common council doubtless supposing that all officers whose duty it was to administer oaths to the candidates elected, understood addition and subtraction. Hence, how groundless the objection of the mayor to administer the oath of office to Alderman Crolius, Assistant Alderman Atwell, and the assessors.

Mr. Foot here said he was willing to believe, and did believe, that the mayor had acted under mistaken views of the law. Having looked at the subject through the erring medium of party association, friendships, and interests, the most subtle and dangerous source of error, he had been led far away from the path of duty; there was yet, however, an opportunity for him to retrace his steps, and do justice to the parties injured, and the public; and turning to the mayor, who was present, said: Sir, it is human to err: but a noble and magnanimous spirit will admit his errors and correct them. Justify the exalted sentiments your fellow-citizens would be happy to entertain of you, by putting an end to this controversy, and giving effect to the undoubted choice of the electors of the sixth ward.

Mr. Foot's third proposition was, that the recorder had authority to administer the oath of office to Alderman Crolius and Assistant Alderman Atwell.

The city charter, granted in 1730, requires every person elected for alderman, assistant, assessors, &c., to take the oath therein appointed, in such manner and form as is therein directed. (K. Chart. 49, sec. 10.) The form of the oath is given, and the mayor, his deputy, or recorder designated as the officers to administer it. (K. Chart. 80, 81, sec. 33.) The amended charter contains substantially the same provisions, and in addition, directs each "board to hold its first meeting on the second Tuesday of May in each year, at which time the mayor or clerk of the common council shall attend, by whom the oath of office shall be administered to the members elected."

By an act of the Legislature, passed 8th February, 1788, every

person who should be appointed or elected to any office in this state was required to take an oath before entering upon his trust, and the officers were designated before whom it should be taken. (2 Greenland, page 45, sections 1 to 7; pages 47, 48, section 8.)

Chancellor Kent, in his learned notes on the charter, made at the request and for the guide of the corporation and its officers, states, that this statute superseded the charter, and that our present Revised Statutes (1 R. S. 118, 119, 120) have declared the existing law on the subject. (K. Chart. 171, note 45.) By our present laws, not only the recorder, but several other officers, had authority to administer the oaths of office to the alderman and assistant of the sixth ward.

Chancellor Kent's views on this subject are strongly confirmed by several provisions in our statutes, which show clearly that the Legislature have long since intended to place the officers of this city on the same footing as officers in other parts of the state, in regard of their official oaths. (Section 1, R. S., 120; section 24, sub. 6. Ibid, 116, section 2; K. Chart. 78, 79; 3 Greenl. 355, sec. 2; 2 R. S. of 1813, 349, section 18.)

These general laws, being merely salutary regulation for the convenience of our citizens, do not interfere with our chartered rights, as the mayor seems to suppose. Independent of these decisive considerations in favor of the recorder's authority to administer the oaths, the court will look at the danger arising from holding that the mayor and clerk only have authority to swear in the alderman and assistants. If they alone have that power, then neither board can organize without their consent, and the whole government of the city lies prostrate at their feet. The clerk, too, by refusing to administer the oaths, may continue himself in office, and thus profit by his own wrongs in direct violation of a most wholesome principle of law, and in opposition to an express decision of this court in a similar case. (*People vs. Bartlett*, 6 Wend. R. 422.)

Mr. Foot repelled with warmth the charge which the mayor had made in his argument against the recorder for administering the oaths of office to Alderman Crolius and Assistant Alderman Atwell without authority, and thereby endangering the peace of the city; and contended that the mayor, and not the recorder, had violated his official duty, and thus hazarded not only the

peace of the city, but treated with contemptuous disregard the rights of the electors of the sixth ward.

*Fourth.* Mr. Foot contended that the board of aldermen, composed of Mr. Crolins and his friends, was legally organized, and Mr. Taylor duly elected clerk.

1. Because Mr. Crolins was elected and legally sworn into office.

2. Because, having been elected and acted as alderman under color of right, he was an alderman *de facto*; and whether he had been legally sworn or not, his acts were legal so far as third persons were concerned, and his right to exercise his office valid as against all persons, except the one who might have a right to his seat, and who should establish that right on a writ of *quo warranto*. The statutory provision requiring the oath to be taken was merely directory, and if neglected, did not, without the formal judgment of a court, take from the delinquent his office, or invalidate his acts; and so this court has twice solemnly decided—first, in the matter of the Mohawk and Hudson Railroad (19 Wend. R. 140). In that case inspectors of election had been informally sworn, and an application was made to the court to set aside the election on that ground. The court denied the application, holding, that although the statute (1 R. S. 604, sec. 7) required the inspectors to take an oath faithfully to discharge their duty before entering upon its performance, yet, taking it incorrectly, or omitting it altogether, did not invalidate their acts. Mr. Justice Cowen delivered the opinion of the court with his usual ability and learning, reviewed all the cases, and established the principle that the inspectors were officers *de facto*, and their acts valid; and also held, that this principle was applicable to all officers. Not long afterwards a similar case arose where the inspectors had taken no oath at all. A like application was made to set aside the election. It was in the matter of the Chenango County Mutual Insurance Co. (19 Wend. 336). Chief Justice Nelson delivered the opinion. These are his words: “The first ground relied on in support of this motion, viz., that the inspectors *were not sworn* according to the directions of the statute (1 R. S. 604, sec. 7), is not in itself sufficient to destroy the election, as was recently held in the case of the Mohawk and Hudson Railroad Company, Art. 135.” These decisions are decisive in

favor of the legality of Mr. Crolius' acts, though he might not have been legally sworn at all, and establish beyond doubt the regularity of the election of Mr. Taylor.

On the same principles and for the same reasons, Mr. William was lawfully appointed clerk of the board of assistants.

The pretended right of Mr. Shaler to hold over on the facts before the court, is too preposterous for discussion.

*Fifth.* When Mr. Taylor and Mr. Williams presented to the mayor the usual evidences of their appointments, viz., resolutions of their respective boards, certified by the presidents, it was his duty as a ministerial officer to swear them in. Yet what did he do? He not only refused, but read their respective boards a lecture, through them, in the form of an opinion, reviewing their organizations, pronouncing them unlawful assemblies, and strongly intimating his intention to take the members into custody if they should continue their meetings. This was exercising ministerial functions in an entirely new form. When it was his duty to look only to the resolutions which the clerks produced, and see if they were in due form, he constitutes himself judge, jury, witness, and constable—in a word, dictator, with plenary powers, and takes the city, aldermen, assistants and all, into his own keeping. When his course is examined with a clear and steady eye, it appears too extravagant for sober discussion.

And now on what ground does he resist an application for a mandamus to compel him to do his duty? He and his associates say, that by the old charter the common council "have the sole power of determining and deciding all elections of all and every one of their officers;" and by the amended charter the two boards are judges of the qualifications of their own members, and therefore this court have no right to interfere, either respecting the assessors or the alderman and assistant. Indeed!

Suppose no officer could be found in the city willing to swear in any of the aldermen or assistants, how would they organize? All act on the principle that they were *de facto* officers? That would hardly do. The true distinction is this: The boards have sworn to inquire into and decide on the qualifications of their respective members, and upon the elections of all other officers; but not to perform the duty of administering to them their official



oaths. The former is judicial, the latter ministerial. The former is exercised by collective bodies, the latter by the officers duly appointed. The one is independent of the other. They do not interfere. The compelling of the mayor to do his duty is not an encroachment on the powers of the Common Council. There certainly can be no reason why the court should withhold its writ of mandamus on this account.

*Sixth.* The writ of mandamus is the appropriate remedy ; and this being a clear case for the applicants, it ought to be a peremptory, and not an alternative writ. For this purpose, Mr. Foot cited the following authorities, in addition to those referred to by his associates : *McCulloch vs. The Mayor of Brooklyn*, 23 Wend. R. 458 ; *The Queen vs. The Mayor of Leeds*, 11 Adol. & Ellis, a late English case, and directly in point ; *Wilcocks on Municipal Corporations*, 368 to 381, and the cases there cited.

Mr. Foot contended that the court ought not, by granting an alternative writ, which would only direct the mayor to swear in the officers or return his reasons for the omission, give him an opportunity longer to withhold from the officers elected the unembarrassed exercise of their rights, keep the city in a state of excitement, and its fiscal agents in embarrassment and doubt as to their duties and responsibilities.

In conclusion, Mr. Foot made an earnest appeal to the court to meet the great question before them with the lofty sternness which became the judiciary of this great state—not to dispose of the subject on mere technicalities and allow the merits of the controversy to pass undecided, but to let the state and the country see and feel that the *Supreme Court of the State of New York* was far, very far, beyond the reach of any unworthy influence ; and that before that high tribunal there was no respect for person—that justice, and justice only, was there administered. He hoped the court would perceive the importance of an early decision, and by making one, allay the deep anxiety with which the friends of law and order looked to the result.

On our first page will be found the conclusive argument of Mr. S. A. Foot, the counsel who closed the argument of the motion before the Supreme Court for the writs of mandamus against the mayor. The clearness and ability with which the propositions taken by Mr. Foot are stated, and the

force of the reasons adduced, must carry conviction to every candid mind, that the decision of the Supreme Court was founded upon law and justice, and that the conduct of the mayor, his aiders and abettors, in their attempt to stifle and defeat the will of the people, is eminently disgraceful. That attempt has been signally rebuked by the high judicial tribunal whose decision was invoked, and we have an abiding confidence that the other forum to which the mayor now appeals, will meet this great question with calmness, and decide it upon its merits, irrespective of all extraneous influences.—*New York Enquirer*, Monday Morning, June 13, 1842.

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No. XXVIII.—VOL. 1, p. 212.

*Cooper's Naval History.*

*Supreme Court of the State of New York.*

J. Fenimore Cooper, plaintiff, against William L. Stone, defendant.

Opinion of Mr. Foot dissenting from parts of the award made in this cause.

Concurring with my associates in the decision made upon the first matter submitted, that the plaintiff is entitled to a verdict at the circuit—and upon the fourth, that his narrative of the battle of Lake Erie was written in a spirit of impartiality and justice—and upon the fifth, that the writer of the review has not faithfully fulfilled the obligations of a reviewer—and upon the sixth, that the review is untrue in several particulars—and upon the eighth, that the defendant is bound to make reparation, and consequently in the general result of the litigation, I have considered it my duty to sign the award, although I do not concur in the decision made upon the second matter submitted, that the plaintiff has faithfully fulfilled his obligations as a historian—nor upon the third, that his narrative of the battle of Lake Erie is true in its essential facts—nor unqualifiedly upon the seventh, that the review is not written in a spirit of impartiality and justice.

Duty to myself, and to the parties who have mutually selected me as one of their judges, requires that I should give my reasons for not concurring in the second, third, and seventh articles of the award.

The second question submitted is, whether the plaintiff, in writing and publishing his narrative of the battle of Lake Erie, has faithfully discharged his obligations as a historian.

I am convinced by the evidence that the plaintiff *intended* to discharge those obligations, but am of opinion that, from error in judgment or some other cause not impeaching the purity of his intent, he has failed to do so in one point; and the facts on which that opinion is founded are the following:

The brig Niagara was not brought into close action till a late period of the battle, and when she did move from the place assigned her in the order of battle, which was in the rear of and next to the Caledonia, toward the head of the enemy's line, which was the scene of action, she passed to the windward of the Caledonia and of the Lawrence, leaving those vessels as she passed them between her and the enemy's line. From the commencement of the action till the Niagara came up to and passed the Lawrence, which was nearly two hours, the latter vessel had received the weight of the enemy's fire, from which she had suffered so severely, that when the Niagara passed her she was unmanageable, nearly dismantled, her crew disabled, 83 out of 103 being killed and wounded, and obliged soon after to haul down her colors. Captain Elliott commanded the Niagara till Captain Perry went on board and took command of her, which was soon after she had passed the Lawrence to windward, as before stated. When the plaintiff wrote and published his history, there was full and authentic evidence before him that the conduct of Captain Elliott was very generally censured, and especially in the navy.

1st. Because the Niagara was not brought into close action till a late period of the battle; and

2d. Because when she did move forward from her station in the American line, toward the head of the enemy's line, she passed to the windward of the Lawrence, instead of the leeward, thus placing, as she passed, the Lawrence between herself and the enemy, instead of placing herself between that suffering ship and the enemy.

The plaintiff, in his history, has not stated or intimated that the conduct of Captain Elliott in the battle was either criticised or censured, but leaves the impression on the mind of the reader

that his conduct was universally approved of. This impression is erroneous, not being in accordance with the fact.

The plaintiff justifies this omission, and assigns several reasons for it.

1st. That on a careful and candid examination of the whole testimony, before writing his narrative of the battle, he was not convinced that Captain Elliott's conduct was censurable, and that such is still his honest conviction, and in writing his history he followed, as he considered himself bound to in the absence of decisive proof to the contrary, the official report made by Captain Perry to the government a few days after the action.

2d. That it was not his duty, as a faithful historian, to state that Captain Elliott's conduct was censured, unless the testimony established a clear case against him, which he insists it does not.

3d. That it was no part of his duty as a historian to inquire into the general character of Captain Elliott, or his standing in the community; and,

4th. That if he had alluded to the subject at all, he ought to have gone into it fully, which would have lumbered his history with a long, tedious, and uninteresting examination of facts, and drawn before the public the personal controversies of our naval officers.

Truth being "the first and great desideratum of history," I do not consider these reasons and some others of minor consequence, which the plaintiff also assigns, sufficient to justify him in making an erroneous impression on the minds of his readers by omitting to state the well-established fact that Captain Elliott's conduct was very generally censured. For,

1st. After a careful examination of all the evidence, and hearing the plaintiff's argument in favor of his views of it, I differ from him in his conclusion respecting the conduct of Captain Elliott.

The three vessels, viz., the *Lawrence*, *Caledonia*, and *Niagara*, were within hailing distance of each other at the commencement of the action. The *Lawrence* and *Caledonia* were carried promptly into close action, and the former being armed principally with carronades, within reach of cannister, and I see no sufficient reason why the *Niagara*, a brig of at least equal size, speed, and appointments, and of like construction to the *Lawrence*, also a

brig, was held so long aloof from the enemy's ships, nor why, when she did move forward toward the scene of action and come up to and passed the Lawrence, she did not pass between the Lawrence and the enemy's line, and thus assist and protect that gallant and suffering ship, and save her from the mortification of striking the American flag after she had fought so bravely, indeed desperately, to sustain its honor. My views on this subject are confirmed by the opinions of several of our distinguished naval officers who were examined as witnesses before us. Nor have I overlooked the important fact that Captain Perry commended Captain Elliott in his official report of the action. But that report is not conclusive. It is only one item of evidence among many others, and its force is greatly impaired, if not entirely destroyed, by the fact that Captain Perry afterwards, for reasons satisfactory to him, recalled these commendations, which was known to the plaintiff before writing his history.

2d. I differ also from the plaintiff in his opinion that it was not his duty to mention the fact that Captain Elliott's conduct was censured, unless the testimony established a clear case against him, or in other words, showed that the censures were clearly well founded. For whether they were just or not could make no difference as to the fact of their existence. Nor can I assent to the proposition that a historian is justified in omitting all incidents or facts not clearly proved. If they are reasonably certain, or rest on proof which commands general assent, I think he is bound to notice them.

3d. I agree in opinion with the plaintiff that it was no part of his duty as a historian to inquire into the general character of Captain Elliott, or his standing in the community; but it appears to me that he was bound to state the opinion which was generally entertained, and especially in the navy, of Captain Elliott's conduct as an officer in the battle which was the subject of the narrative. Being second in command, of equal rank with Captain Perry, and commanding a ship of at least equal force, he was prominent, and is so presented by the plaintiff in his history. His acts are stated, the favorable views of them exhibited, and I cannot but think it just and proper that the censures which his conduct produced should also have been mentioned, and for the same reason that the plaintiff has noticed the criticism made



upon Captain Perry for the manner in which he brought his squadron into action, viz., to state the whole truth.

4th. If an allusion to the censures would necessarily have drawn after it a full discussion of the facts, and an exposure of personal controversies, I do not think the plaintiff justified in omitting to mention them. But I do not perceive that any such consequence necessarily followed. After fairly and succinctly stating the censures, and the parts of Captain Elliott's conduct disapproved of, the historian had it in his power to make such remarks and reflections as his judgment and taste dictated; and the whole demands of truth and justice might have been satisfied upon one page, probably upon half a page.

These facts and reasons have drawn me reluctantly to the conclusion that the plaintiff has not faithfully discharged his obligations as a historian in this particular; but I can freely add that this is the only particular in which it appears to me he has failed to fulfil the high trust which he assumed when he undertook to write the history of the navy of his country.

The third question submitted is whether the plaintiff's narrative of the battle of Lake Erie is true in its essential facts—and if untrue, in what particular.

The views which I have taken of the second question submitted to the arbitrators, necessarily lead me to the opinion that the narrative is untrue in creating the erroneous impression that Captain Elliott's conduct in the battle met with universal approbation.

The seventh question is, whether the review was or was not written in a spirit of impartiality and justice. The decision made by the award is that it was not, or in other words that the review was written in a spirit of partiality and injustice. To this decision I cannot unqualifiedly assent.

There are some facts and considerations which, in my judgment, ought to qualify the decision of this question. They are these: The plaintiff in his history has compared the services and exposure of Captains Perry and Elliott in an open boat during the action, and stated that each of them received a gold medal from Congress. He has also stated that Captain Perry was criticised for the manner in which he brought his squadron into action. These circumstances, together with his omission to

mention that Captain Elliott was censured for delaying to bring the Niagara into close action, and for not passing between the Lawrence and the enemy's line, would naturally excite the feelings of the relatives and friends of Captain Perry, and might mislead the judgment of a friend who cherished a high and sensitive regard for his memory, respecting the merits of the history and of the historian, and would justify a spirited and pungent review of the narrative. They did lead the reviewer to suppose that almost any weapons were justifiable in his attack upon the plaintiff and his history. And under the influence of feelings which they excited, the writer of the review overlooked the full measure of just praise which the plaintiff has awarded to Captain Perry, and undervalued the services of Captain Elliott the year before the battle of Lake Erie, and those which he did render in that battle.

To me it appears that the review was written under the influence of a wakeful sensibility, inconsiderately and unnecessarily roused in defence of the reputation of a beloved and deceased friend.

SAMUEL A. FOOT.

NEW YORK, June 16, 1842.

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No. XXIX.—VOL. 1, p. 220.

*Mutiny and Commander Mackenzie.*

FOR THE COMMERCIAL ADVERTISER.

*The Executions on board the Somers.*

MESSRS. EDITORS:—There appears to be great misapprehension on the part of many in respect to the true question which Commander Mackenzie was obliged to determine in the difficult and appalling position in which he was placed. He was bound, not only to protect his own life and preserve his vessel, but to save the life of every officer and seaman under his command. An outbreak, with a view to take the vessel, or an attempt to rescue the prisoners, could not have been put down without the loss of some,

and probably of many, valuable lives—officers and men who were true to their country and her flag would have fallen in the inglorious strife. The Commander, however willing to jeopard his own life, had no right to hazard the lives of his faithful officers and men. He was under the highest and most solemn obligations of duty not only to preserve their lives, but also not to expose them to imminent peril if it could be avoided. In deciding on his measures to effect that object, if he erred on the side of protection to the unoffending, law and reason look with favor on his error. But the question which he was obliged to determine was, *whether there was reason to believe that the mutineers would attempt to rescue the prisoners or seize the vessel.*

If there was reason for such belief, and the Commander had not acted with the requisite energy to prevent the attempt, and the lives of his officers and men, or even one of them, had been sacrificed in defeating it, the country would justly have demanded his punishment. Law and justice both declare that every one of the mutineers should die in preference to the loss of a single faithful life in resisting their atrocious designs. And the Commander, if he had reason to think that the life of one true man was in actual danger, was imperiously required to remove that danger, however many guilty lives it might cost.

A FRIEND TO JUSTICE.

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No. XXX.—VOL. 1, p. 232.

*Presidential Election of 1844.*

*Speech of Samuel A. Foot, Counsellor-at-Law, in the City of New York, delivered at the Mass Meeting at Millstone, New Jersey, August 7th, 1844.*

Fellow-citizens of New Jersey, said Mr. Foot, allow me to return my grateful acknowledgments for the honor conferred upon me by the invitation received through your committee, to

meet and address you at this interesting spot, the birthplace of Mr. Frelinghuysen, our candidate for the Vice-Presidency. Several years have elapsed since I deemed it my duty to address political assemblies; but at every election during that period, as well as before, I have not only exercised my right to vote, but openly and freely declared my political opinions, and endeavored, by all honorable and proper means, to promote the election of those candidates whose political principles I approved. This I consider the highest political duty of every American citizen. The approaching Presidential election is, in my judgment, far more important than any which has occurred since the adoption of our Constitution. It presents questions to the American people for their decision, which involve not only the prosperity of the country, but the existence itself of our hitherto happy and harmonious Union. That man's heart does not beat with true American blood, nor has he a just appreciation of his duty to his country or to his fellow-men, who, having the right, shall omit to vote at this election; or beforehand to declare openly his sentiments on all suitable occasions, for the instruction and encouragement of those who may wish to hear him. Impressed with these sentiments, entertaining a deep and long-abiding regard for Mr. Clay, our candidate for the Presidency, and under a solemn conviction that our country owes it to herself to reward him with her highest honor for a long life of elevated and patriotic services, thereby showing her sons that her best gifts are reserved for those who do well, and feeling a warm interest in the life, character, and present position of your own Frelinghuysen, I come in accordance with your invitation to meet and address you.

There are four great questions before the country—

The first respects the duty of the General Government to provide a safe and convenient currency for the people in the transaction of business, and which shall be of equal value throughout the Union, and readily convertible into specie at any time and place. The whigs maintain that it is the duty of the General Government, which alone has the power, to provide the people with such a currency, by means either of a bank with restricted and well-guarded powers, subject to control by the laws of Congress, and unconnected with the Government except as a deposi-

tor and dealer; or some other fiscal measure to be devised, matured and enacted by Congress.

The political opponents of the whigs, on the other hand, contend that this is not the duty of the General Government. Their doctrine is, that Government should only provide a currency for its own use, and that the people should take care of themselves. When they had the power, a few years since, they put their principles into practice, and established by law the Sub-Treasury, which, if it did not provide a currency for the Government, certainly left the people, in regard to a currency, to take care of themselves. But since Mr. Van Buren, the author of that scheme, has been sent into retirement by his party, the scheme itself appears to have gone with him, and no one seems disposed to bring it back from the oblivion to which it has been consigned by universal consent. The former friends of this measure, when conscious of the necessity of saying something in their public addresses respecting the currency, conjure up the ghost of the United States Bank, which is dead, buried, and almost by this time dissolved into dust, and after assailing with bitter reproaches and exhausting their ire upon this poor ghost, they will in general admit, that the people ought to have a safe and convenient currency with which to transact their business, but do not propose any mode of providing it.

The second great question relates to the distribution of the proceeds of the public lands among the several states.

The whigs are in favor of their distribution, and hold that, as the General Government has revenue sufficient without them, the states ought to have them, mainly to extend the means of education among the people, carry forward their plans of internal improvements, and if indebted, to pay their debts. Our political opponents insist that the proceeds of these lands shall form part of the revenue of the Federal Government, and if not wanted for that purpose, that then the lands themselves shall be ceded to the several states in which they lie.

The third great question concerns the protection of American labor.

The whig doctrine and action on this subject is, that the General Government shall raise, from customs on imports, a revenue adequate to its wants, exclusive of the proceeds of the public



lands; and in adjusting a tariff of duties to effect that object, a discrimination shall be made so that articles of necessity and daily use which we cannot raise or make ourselves, shall be admitted free of duty; while on articles of luxury and those we can raise or make ourselves, shall be imposed a duty sufficient to create the requisite revenue, and encourage the raising and manufacturing of those articles which we can raise and manufacture ourselves. For instance—tea, coffee, and the like shall be admitted free of duty; while on wines, silks, cotton goods, woolen goods, manufactures of iron and the like, a duty shall be imposed sufficient to effect the object mentioned, viz., an adequate revenue, and the encouragement of the manufacture of cotton goods, woolen goods, and all articles made of iron and the like.

The doctrine of our political opponents is, that the General Government shall raise from customs on imports a revenue adequate to its wants, including the proceeds of the public lands, and that in adjusting a tariff of duties, the only object in view shall be the raising of a sufficient revenue, and that a duty shall be laid on such articles as will best accomplish that object. For instance—they would tax tea, coffee, or any article which would the most readily, conveniently, and certainly yield the requisite revenue. They leave the labor of the country and the people who perform it to take care of themselves, as they do in respect to the currency.

These three great questions have been fully and profoundly discussed before the people for years. They were the great issues submitted to them for decision at the Presidential election of 1840, and upon them a decisive popular verdict was rendered. The people declared, by a very large majority of the popular vote, and by a vote of nineteen states to seven, in favor of the whig doctrines. Subsequent circumstances, with which you are all acquainted, prevented the whigs from carrying into operation but one of their measures, viz., a protective tariff. They must, therefore, again go to the polls and again declare their will.

It is not my purpose, on this occasion, to repeat the arguments in favor of these three leading whig measures. I will, however, direct your attention for a few minutes to an objection made (and with considerable earnestness of late) by some of our Southern brethren, to the tariff. They affirm that it is sectional and

oppressive in its operation upon the South. Were I convinced of this, my vote would be against it. But I am entirely satisfied that they are mistaken, and will present a single consideration among many to show their mistake.

Their great article of production is cotton, and they almost supply the world with this raw material. It is clear that the larger the quantity annually manufactured and consumed, the better for them. England is the principal purchaser of the raw cotton, and the principal manufacturer for the world. It is obvious that the lower the price of cotton goods is in the markets of the world, the more of them will be purchased and consumed. If England has no rival, and is the only seller in these markets, she can fix and command her own prices, and of course they will be higher than if she had a competition, and consequently a less quantity of goods will be sold and consumed. Now, the effect of the tariff is, so to encourage and foster our manufactures of cotton, that our merchants who send them abroad can successfully compete with England in foreign markets. The result must be and is, to bring the prices of cotton goods down to the lowest point at which they can be afforded. This increases the quantity manufactured, sold, and consumed. The inevitable consequence of that is, the increase of the demand for the raw material and an enhancement of the price. Another result also follows equally favorable to the South. While England is the only principal purchaser of the raw material from the producer, she can prescribe the terms on which she will buy, and name her own price. But if we manufacture at home, our Southern brethren have another market for their production, and a domestic one, too, which is safer and better. This raises the price on the raw material to the highest point which the manufacturer at home or abroad can afford to pay. This and other like causes have effected a great change in the public sentiment at the South within a few years past. In 1832 there was a general sentiment in that quarter against a tariff; but in 1840, Maryland, North Carolina, Georgia, Mississippi, and Louisiana declared themselves in favor of the tariff, and voted the whig ticket, and Virginia only condemned the whig policy by a majority of 1393 on her popular vote. Since then it is well known that public sentiment has undergone a considerable change in that state in favor of a

protective system, and it is confidently believed that at the approaching Presidential election, the Old Dominion will place herself on whig ground. The causes which are operating will as certainly produce that result, as the vernal and genial sun will bring forward the vegetation of spring; and it requires no unusual spirit of prophecy to predict, that within five years a protective tariff will be as popular south of the Potomac as it now is north of it.

The fourth great question before the country, which the people are called upon to decide at the next Presidential election, relates to the annexation of Texas.

This is a new and serious issue, which affects the existence itself of our Union, while the three others only involve our national prosperity. Let us approach and discuss it with the solemnity of feeling and sense of responsibility which its importance demands. It is a delicate subject, and one which I would have avoided could I have reconciled such a course to my views of duty. It has come suddenly and unexpectedly upon the country within the last few months. To understand it we need go no farther back than the month of August, 1837, when the Texan minister at Washington made a formal proposal to our Government to admit Texas into the Union. President Van Buren and his Cabinet gave the proposal a serious consideration, and determined to decline it. Mr. Forsyth, a citizen of Georgia, was then Secretary of State. He concurred in this determination, and communicated it in clear and unequivocal language to the Texan minister. So decisive was this action of our cabinet considered, that in the month of October of the following year, on the occasion of exchanging the ratifications of the boundary convention between the two countries made in April previous, the Texan minister addressed a note to Mr. Forsyth formally withdrawing the proposition. These facts were presented to the nation through the public journals, and the subject was considered at rest forever. Occasionally an intimation was given by some member of Congress in debate, and particularly by Mr. Adams, that the project of annexation was still entertained at the South, though it was deemed so chimerical by the nation at large, that these intimations did not attract the public attention to any considerable extent. Thus the subject rested until the middle of

March last, when the country was astounded by the intelligence that a negotiation, commenced by a proposal on our part, had been pending some months between the governments of the two countries for receiving Texas into the Union, and that a treaty was already arranged and ready for signature, and by some persons believed to be already signed, and that two-thirds of the Senate of the United States were ready to confirm it. This roused the nation and filled the country with the deepest anxiety. The attention of the people was at once directed to the Senate, and it was soon ascertained that the noble national council were uncommitted, and ready fearlessly to discharge their duty. This calmed the public mind for the time, but the future was filled with peril; and the people turned with eagerness to ascertain the opinions of Mr. Clay and Mr. Van Buren, the candidates for the Presidency of our two great political parties, and especially to the former. He did not leave the public long in doubt. His direct, manly, and satisfactory letter of the 17th of April was published a few days after its date. The whigs were delighted and the nation composed. About the 1st of May, Mr. Van Buren's letter appeared, written with beauty and propriety, characterized, however, by the peculiarities of his public papers, yet full and explicit against immediate annexation, and generally understood to be against the measure under any circumstances. The political party of which he was the acknowledged leader, at least so understood it; and the nation were becoming united against the measure. Our political opponents in this section of the country were open, loud, and decided in their opposition. Soon came the national conventions for nominating candidates for the Presidency. The whigs unanimously and by acclamation nominated Mr. Clay on the 1st of May. On the 27th of that month, the other convention assembled—you know the result, Mr. Van Buren was defeated on account of his opposition to annexation. Mr. Polk, a gentleman imperfectly known to the country, and not before named as a candidate, was nominated because he was already committed in favor of immediate annexation; and a resolution passed unanimously by the convention recommending the "re-annexation," as they are pleased to call the measure, of Texas to the Union, "at the earliest practical period."

Here a moral and political phenomenon arrests our attention.

This great political party, which "*par excellence*" claims never to have changed its political principles, were united before the convention against annexation, but since its adjournment have wheeled to the right about, are now in favor of it, and have adopted "Polk and Texas" as their rallying shout. I ought not probably to say unqualifiedly, that "*this party*" have so suddenly changed their political opinions, but that *leaders* of the party have; for I am happy to learn there have been lately strong indications that the great body of intelligent and patriotic citizens, who constitute that party, do not intend to follow their leaders and run headlong after "Polk and Texas."

The Senate have rejected the treaty by a vote of *thirty-five to sixteen*, and popular sentiment has confirmed their decision, and judging from appearances, by as great a preponderance. Still the project is not given up, and an appeal is made to the people by presenting a candidate for the Presidency specifically on that ground, and the nation must respond.

Texas is a foreign country. If we ever had any just claim to it, of which there is great doubt, we formally and fully relinquished that claim to Spain by our treaty with her of the 22d of February, 1819. After describing the boundary line which divided the Spanish possessions in North America from the United States, the treaty contains the following solemn and explicit renunciation of our claim: "The United States hereby cede to his Catholic Majesty, and renounce forever all their rights, claims, and pretensions to the territories lying west and south of the above described line."

Those territories included Texas. After such a treaty we have no more right to Texas than we have to Mexico or Spain herself. Since the treaty was made Mexico has succeeded to the rights of Spain, and Texas would this day have been a part of Mexico and under her government, had not the present possessors of Texas wrested her by violence from Mexico. Mexico has never relinquished her right to Texas, and still claims it. Although we have recognized Texas as a nation, *de facto*, our Government has never declared, nor has it a right to declare, that Mexico has not still a just and lawful claim to Texas. Hence, if we take Texas into the Union, without the assent of Mexico, we violate our treaty of peace and friendship with her, and give her just



cause of war; and she has avowed her determination to declare and prosecute such a war to the extent of her means, if we annex Texas to this country.

In such a war we would doubtless be victors, but our victories would be inglorious. They would be the triumphs of the strong over the weak in an unjust war. Moreover, we should be after all the greatest sufferers. Our commerce is spread over the world. Her ports on the Atlantic and Pacific oceans would swarm with privateers under her commissions and manned by adventurers from every quarter. Our commerce would suffer severely, while she would have none for us to capture in turn. We could only march armies over her plains and massacre her wretched soldiery. How ignoble the strife! How unworthy a just and brave people!

Texas, besides, is deeply indebted. The amount of her debt is uncertain. No one estimates it at less than ten millions of dollars, and the better opinion is that it is nearly or quite twenty millions. Take the medium sum, and suppose it to be fifteen millions. No principle of national law is more universally admitted or founded on sounder reasons than this: that if one nation, large or small, is annexed to or united with another, the debts of the nation thus annexed or united become the debts of the whole nation formed by their union. Hence, if we annex Texas to the United States, her debts become ours, and we must pay them in full. Texas has nothing to transfer to us with which we can pay these debts. She has sold all, or nearly all, of her public lands to speculators, and has not enough left to pay the tithe of her public debt, and those which she has left will be unsaleable for half a century or more, as they are scattered remnants of a poor quality—all her best lands having been selected and sold.

Her public debt having greatly depreciated, very little of it is now in the hands of the original lenders. It has been bought up for a trifle, and is now owned almost wholly by reckless speculators and capitalists thirsting for gain. The title to her lands also being doubtful, they have shared the same fate, and are in general owned by the same classes of persons. But of what countries are these persons citizens or subjects? Very few of them are comparatively American citizens. Most of them are for-

eigners. They would make a grand speculation if they could persuade the United States to annex Texas and pay her debts. But every dollar paid would be a dead loss to us. Neither the owners of the lands and public debt of Texas, nor the present possessors of the country, are particularly worthy of our national regard. In general they hung loosely on the communities from which they separated, they obtained the country by violence and injustice, they are disorderly, and many of them covered with crime. If we can spare from our public treasury fifteen millions of dollars and afford to give them away, had we not better assist some of the unfortunate states of our Union to pay their honest debts?

The history of the world and its present condition teach us, that the commerce and business of a nation or community follow the course of their rivers. The map of Texas shows us that her three principal rivers, the Brazos, the Colorado, and Rio Grande, run through her territory from north to south and empty into the Gulf of Mexico between the 25th and 30th degrees of north latitude, and point to the West Indies and Europe for commercial and business relations. We all know that the mind and heart of a nation or community follow the direction of their commerce, business, and interests. If we should, therefore, bring Texas into our Union, we could never, I fear, bring her population into close communion with us, and make them a part of ourselves. They would not sympathize with us, but always remain a distinct people. The Anglo-Saxons in Texas must and will mingle their blood with that of the colored and free Mexicans, who compose a large part of her population, and a race of men will spring up, whom our children will not thank us for making their fellow-citizens, nor for giving the two a common destiny.

In passing allow me to remark, that it may be well, when the subject of Oregon is again before Congress, to consider whether the Rocky Mountains are not one of nature's boundaries between the nations of the earth, which the art of man can never overcome, and whether, instead of revoking our treaty with England for a joint occupancy of the territory, and wrangling with her for years about the title, we should not better promote the happiness of the human family and our own peace and prosperity, by agree-

ing with her to permit the citizens and subjects of both countries to occupy the territory in common, and when the population is sufficiently large, say when it amounts to 50,000, guarantee to them an independent government, and allow a branch of the Anglo-Saxon family there to live and develop their mental and moral powers, and open and improve the resources of the country.

To return to Texas. An inspection of the map of the United States and Texas will show us, that Texas adjoins only one corner of our widely extended domain. Her territory is said to be, and probably is, large enough for five states of the size of our own Ohio; and her lands generally are rich and productive, and her climate genial and healthful. Ere long, she will doubtless be a powerful and prosperous empire of herself. Were she to be added to us, we should together be ponderously unwieldy and badly balanced, and soon fall to pieces.

I will now direct your attention, fellow-citizens, to a more serious aspect of this subject, and one which touches us and the nation at large more nearly.

The Constitution of the United States provides, that "Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons." This provision of the Constitution is well known to have been the result of a compromise between the Northern and Southern states, after a protracted and most earnest debate in the convention of 1787, which framed the Constitution, and which debate became towards its close so violent as to threaten a disruption of the convention, which would have prevented the adoption of our Constitution, and deprived us of the blessings of our happy Union. The meaning and practical effect of this clause of our Constitution is, to make five slaves equal to three persons in determining the ratio of representation and direct taxation, and the number of representatives each state is entitled to in the Congress of the United States, and the amount each state shall pay of any direct tax which Congress may lay. The census of 1840 shows that there

were then in the thirteen states of the Union in which slavery exists 2,453,210 slaves. Deduct two-fifths and there remains 1,471,926 to be deemed persons. The ratio of representation in Congress by the act of 1842 is "one representative for every 70,680 persons in each state, and one additional representative for each state having a fraction greater than one moiety of the said ratio." This gives those states twenty-one representatives on their slave population. They have one hundred in all. These twenty-one representatives are not representatives of persons, as in the other states, but of property in the form of slaves. This makes, in the election of President and Vice-President of the United States, and of representatives in Congress, a vote in the states where slavery exists equal, on a general average, to one and one-fifth of a vote in the states where slavery does not exist—and makes the vote of a Southern planter, who owns one hundred slaves, equal to eleven votes in this and every other state where there are no slaves; for his one hundred slaves are counted as sixty persons; allow one vote to every six persons, as is the case among us, and he has for his one hundred slaves a political influence equal to ten votes; he has besides, one vote in his own right, and thus possesses a political power in the General Government equal to eleven of us. In other and fewer words, a voter in a slaveholding state is equal to one and one-fifth of a voter in the other states, and the owner of one hundred slaves is equal to eleven voters in the states having no slaves. This rule of representation is also unequal and operates unjustly between the several states themselves where slavery exists, and between districts of the same state; for the larger the slave population is in any state or district, the greater is the political power of the voter in it. In the compromise which was made on this subject in the convention, it was supposed that the payment of direct taxes in the same ratio would be an equivalent, at least to some considerable extent, for this great inequality of representation. It has proved in practice, however, to be no equivalent at all, as the Federal Government has seldom resorted to direct taxation for revenue, and probably never will again. The debates of the convention and concurrent history show, that the principal considerations which induced the Northern states to consent to this compromise, were—

1st. That the old thirteen states of the Union had unitedly carried to a successful termination the war for their independence—had shared the perils of that fearful and glorious contest, and ought to enjoy together the blessed fruits—that companions in danger ought to be brothers in safety—and,

2d. That the Northern states had taken an active and principal part in the importation of slaves into the country, and had received a much larger increase of wealth from that traffic than the Southern states.

Whatever were the considerations, however, which led to the compromise, there is no doubt that it was fairly made, and ought to be freely and faithfully adhered to; and he is neither an honest man, a true patriot, or a friend to the Union, who will attempt to disturb it, or abridge or embarrass the rights secured by it.

But when an attempt is made to bring a large foreign territory, in which slavery already exists, into the Union, and extend to it this principle of unequal representation, very different views are to be taken, and very different considerations applied. There is not a thinking head nor a manly heart in the land, unbiased by interested, or local, or party associations, which does not teem with reasons and impulses against the measure. Let us examine the prominent reasons assigned for the extraordinary attempt:

1st. It is said we require Texas to secure us against a hostile invasion by England of our southern border. This is too absurd to require an answer before an audience composed of men of common sense.

2d. It is said that England will interfere with the domestic policy and institutions of Texas, and thereby endanger our Southern brethren in the enjoyment and use of their slave property. England has been addressed on this subject, and she positively and unequivocally disavows any such intention. Her public faith is, therefore, pledged against any such interference, and there is no danger of her violating it. If she does, the "Stars and Stripes" know how to correct the evil.

3d. It is said by the advocates of this measure that our Southern brethren desire the annexation of Texas for the purpose of extending, fostering, and perpetuating the institution of slavery. Of this I affirm there is no evidence, and I hope, indeed I believe, that the contrary is true. I am fully aware of the extravagant



opinions expressed by some distinguished individuals in South Carolina, who, on more than one occasion, have shown disloyalty to the Union, and are now said to desire the annexation of Texas as an element for a great Southern slave-holding Confederacy, in case of our disunion, for which they hope; but we ought not, fellow-citizens, to do the great body of our Southern brethren the injustice to believe that those individuals speak the sentiments of the South. Our Southern fellow-citizens have let us and the world know that they will not permit any interference from any quarter with their peculiar domestic institutions. In this they are right. They are the sole judges and are alone responsible for their domestic policy, and there is scarcely an honest and sane man in the country who thinks otherwise. It is true that they have committed a great error, during the last few years, by attempting to exclude from Congress petitions on the subject of slavery, and thereby have fallen into a false position. They have made an issue which involved the right of petition, which is one of the broadest, most sacred, and valuable rights secured to the people by the Constitution. The sense of the nation undoubtedly is, that even an abuse of the right had better be tolerated, than an abridgment of it suffered; and our Southern brethren, fortunately, are now beginning to take that view of the subject.

But what is the evidence that a great majority of our fellow-citizens of those states where slavery exists do not desire, but, on the contrary, are opposed to the annexation of Texas? I answer,

1st. The vote of their senators on the treaty of annexation. That vote was *fifteen against* the treaty, and *eleven* for it.

2d. The late election in Louisiana. She has cast her vote for the whig doctrine on this subject. She has confirmed Mr. Clay's letter, and shows that she intends to vote for him. Here we have two clear and decisive proofs of the state of Southern political sentiment on this subject, and nothing to countervail them. We ought not to be surprised at this. We ought to have expected opposition from the enlightened portion of our Southern brethren to this project of annexation. They are as just, reasonable, liberal, and patriotic as ourselves. It would be ungenerous, unkind, and unjust on their part, in view of the great compromise between the North and the South, so favorable to them, to crowd Texas, even if they could, into our common Union, against the

wishes of their brethren in the East, North, West, and central portions of the country. They are also too wise and patriotic to endanger our Union by such a rash and unnecessary measure. They well know, and I doubt not respect, the firmness of their fellow-citizens throughout the United States on questions of right and duty, and have too much respect for themselves, and regard for their countrymen, to wish even to deprive them of their rights, or place them on terms of inequality in the administration of the Government. If I understand public sentiment at the South, I hazard nothing in saying that if the Southern states were now cultivated by free labor, a large majority would no more think of introducing slavery than we do in our own states. With such views they would be inconsistent, unreasonable, and unjust to push their fellow-citizens of the non-slaveholding states into the acquisition of a foreign territory, with a view to extend and perpetuate slavery; especially as they are well aware, that public sentiment throughout the civilized world has of late years become hostile to the institution, and that we, as a nation, are reproached for tolerating it in our Republic. The embarrassment of the wise, just, and humane of our Southern brethren arises, as I understand, from the difficulty in determining what is their duty in regard to their slave population. They are obliged to deal with a domestic institution and policy already established—to care for millions of human souls in the midst of them, for whose temporal and spiritual welfare they are responsible. They alone have the power and must dispose of this great embarrassing subject under a sense of their own responsibility. Their fellow-citizens should bide their time. When they ask aid from their brethren in other parts of the Union, for one, I can say, they shall have it in full measure, heaped up, and running over. The honor of the country is as much in their keeping as ours, and I have full confidence in their wisdom, honor, and patriotism.

But whatever may be the views and wishes of the South, no reasonable man can doubt for a moment that forcing Texas into the Union, with public sentiment divided, would be a most dangerous measure. If he doubts, let him recur to the debates and proceedings in Congress, in the years 1820 and 1821, for the admission of Missouri into the Union, when this question of unequal representation as connected with slavery arose, and he will find that

our Union was shaken to the centre. Fortunately for the country, she had a Henry Clay in her councils, whose wisdom, firmness, and eloquence subdued the spirit of strife, effected a compromise, and pacified the nation. It was doubtless in view of the circumstances attending the admission of his own state into the Union, that Senator Benton stated, as I understand he did, in the late debate on the Texan treaty, that he wished to have all questions respecting slavery in Texas settled as we went along, and unless that was done he could not vote for annexation. The remark was both wise and just.

4th. But again say the advocates of annexation, Louisiana and Florida have been annexed and admitted into the Union since the adoption of the Constitution, and so should Texas be; and with the same reason I might say, and so should the Canadas, Nova Scotia, New Brunswick, California, Mexico, South America, and the West Indies. There is, however, a marked and plain distinction between the acquisition of Louisiana and Florida and the proposed annexation of Texas.

At the commencement of the present century, when our western and southwestern territories, which lie on the Mississippi river and its tributary streams, began to be settled, France owned Louisiana, which embraced both banks of that river at its mouth and for a considerable distance up into the country. Under these circumstances the nation saw those large territories had no access to the ocean and a market, nor a suitable place of deposit, at which produce descending and goods ascending the river, could be transshipped from river to ocean navigation, and *vice versa*. It was obvious, therefore, that Louisiana must be acquired, or a large, fertile, and beautiful portion of our country become measurably valueless, or tributary to a foreign power. President Jefferson addressed himself to the subject, and in 1803 succeeded in making a treaty with France for the purchase of Louisiana. He did not, at the time of making the treaty, contemplate incorporating this large, newly-acquired territory with the country, or admitting it into the Union, except by an amendment of the Constitution. He expressed the opinion that that could be done in no other way, as the Constitution made no provision for admitting foreign territory or States into the Union, and only provided for the admis-

sion of new states formed out of our own territory. But the nation, seeing the necessity and importance of the acquisition, were unanimous in its favor. All the branches of the Government, soon afterwards, in the discharge of their respective functions, recognized it. The whole country acquiesced, and the formal reception of the new territory by an amendment of the Constitution was first postponed, and finally dispensed with altogether.

In regard to Florida, the circumstances were somewhat similar, and the acquisition identical in principle. We obtained this territory of Spain in 1819 by a treaty with her. For several years previous we had been pressing her to discharge some large claims we had upon her, and which she was very backward in acknowledging and paying. During this time Florida was neglected and feebly governed. It had become the receptacle of freebooters and vagabonds, who stimulated the Indians and joined them in hostile incursions into our country, plundering and murdering our citizens. The old fort of St. Marks, not many miles from our border, furnished a place of security for these marauders when pursued by our citizens. To get rid of this dangerous annoyance, obtain satisfaction of Spain for our claims, for which we could get nothing else, and protect and facilitate the navigation between our Atlantic coast and New Orleans, we acquired Florida. The nation unanimously acquiesced, and a formal reception of the territory, by an amendment of the Constitution, was either not thought of or deemed unnecessary.

In each of these cases the necessity was urgent, the advantages great and obvious, and the nation unanimous—every one of which is wanting in the case of Texas.

It appears to me that the American citizen who shall press the annexation of Texas on any considerable portion of his fellow-citizens against their wishes and feelings, has a very inadequate conception of the respect, courtesy, and kindness which are due from him to them; and also the danger to which our Union is exposed by such a course of conduct, and he is no friend of that Union who shall omit to raise his voice and deposit his vote against this dangerous and unjust project.

We have seen that a majority of our fellow-citizens at the South—and I rejoice at the fact—do not desire the annexation of

Texas. A vast majority, too, of our wisest, best, and most patriotic citizens in every other part of the country are opposed to it. Whence, then, comes this movement? I fear that a spirit of gain is the moving cause. No human eye can see in whose desks lie the deeds for Texan lands or the scrip for Texan stock. There can be no doubt that many, and I am willing to believe all, our influential public men who are advocating this measure, are sincere in their belief that, if carried, it will prove beneficial to the country; but there is too much reason to fear that they are the unconscious instruments of the ever-wakeful, striving, and absorbing spirit which has originated and now prosecutes the scheme. By such a spirit, country, friends, and principles are disregarded, and it appears to be impressing its own character on the contest. An incident which I will relate confirms this idea.

The supporters of Mr. Polk made preparations for a public meeting in one of the farming districts in the interior of Pennsylvania. They issued imposing bills headed "Polk and Texas Great Democratic Meeting," and calling themselves democrats (of which I shall have a word to say by and by), invited all who claimed the name to come to the great meeting. They also gave a list of distinguished men who would make addresses. The people assembled, and among them was an honest and respectable old man, who owned a good farm in the neighborhood and considered himself, as he really was, a good democrat. Over the platform on which the officers of the meeting sat and speakers stood, was placed a large standard with "Polk and Texas" in flaming capitals. Speaker after speaker was heard, and their only topic was Polk, Texas, and annexation; and whenever a speaker rounded off a sentence with "Polk and Texas," some one proposed three cheers, and they were heartily given. At length when one of the speakers, more ardent than the others, had closed his address, some one called for nine cheers for "Polk and Texas," and they were given. The good old man, who really loved his country, and thought her entitled to as many cheers as any country, had been impatient for some time that nothing was said about our own country, and when the nine cheers for Polk and Texas had been given, he could stand it no longer, and called out, "I say, Mr. Chairman, after hearing so much about



this foreign country they call Texas, I think it is time to say something about our own country, and move ‘nine cheers for the United States of America.’” By this time there was a dead silence in the assembly, and the chairman asked, in an angry tone, “Who is that disturbing the meeting?” On this a general shout arose, “Turn him out—he’s a whig!” The action followed the word, and the honest, well-meaning old man, to his utter amazement, was roughly shoved out of the meeting.

Fellow-citizens, let us follow the example of the honest old farmer—leave Texas to her own destiny, which we all hope will be a glorious and happy one, and stand by our own country and be satisfied. Our lines have fallen to us in pleasant places. A more noble land than ours was never spread out for the enterprise of man. May we be grateful, and endeavor to improve the bounties of a kind Providence.

The present canvass and approaching election have assumed one aspect, most inauspicious to the permanency of our Union and discreditable to the country. I allude to the fact that Mr. Polk is presented as a candidate and his election urged on sectional grounds. Mr. Van Buren was the favorite and approved candidate of a large majority of his party. It became his duty, just before his nomination was to be made, to express his opinions on this new issue respecting Texas. These opinions were wise and national, and in my judgment he deserves the thanks of the country for entertaining and expressing them. He was managed, not voted, out of his nomination (for there was a clear majority in the convention in his favor) by Southern gentlemen of his party, and Mr. Polk nominated in his place, avowedly on the ground that the annexation of Texas was a Southern measure to promote Southern interests, and that Mr. Van Buren was a Northern man and not prepared to go at once and all lengths for it; while Mr. Polk was a Southern man, and ready and desirous to do so. And since the nomination some prominent gentlemen at the South, particularly in South Carolina, have declared, and a few public meetings have responded to the sentiment, that Texas shall be annexed or the Union dissolved. Such declarations are disgraceful to the country, and wound every American bosom. The approaching election will give the people, and especially our Southern fellow-citizens, an opportunity to express their

detestation of such parricidal sentiments. The issue is fairly made. Mr. Polk is confessedly a sectional and the Southern candidate, while Mr. Clay is the candidate of the Union, and of the whole Union. May the right prevail!

Permit me now to take a brief notice of our candidates—Henry Clay for President, and Theodore Frelinghuysen for Vice-President.

We all know Mr. Clay to be a man of towering intellect, uncompromising integrity, inflexible firmness, physical courage, and powerful and persuasive eloquence. A man possessing such positive qualities will always have many warm opponents and some rancorous enemies, who will decry his virtues, magnify his foibles, and even falsely accuse him. Mr. Clay has shared the common fate of men of his mould.

Among the many amusing accusations made against him by his present political opponents, is this: That he was formerly a democratic republican and belonged to their party, but changed his politics some years since and became a most desperate whig! Having myself been born and bred a democratic republican, and reached early manhood just in time to become identified with the old republican party before it lost its distinctive character during the Presidency of Mr. Monroe, I think I have a right to say something on this subject. And who are the gentlemen who, in these latter days, call themselves so loudly “democrats,” “friends of the people”? They are to be known rather by what they do than by what they say, for “actions speak louder than words.”

We find them, then—

1. Opposing the people having a safe and convenient currency.
2. Opposing the people in the several states having the proceeds of the public lands to educate their children, and build railroads and canals to carry their produce to market.
3. Opposing the protection and encouragement of American labor, and insisting that articles of necessity, which the people use daily, shall be taxed the same as articles of luxury, if they will produce the same revenue or more.
4. Advocating the annexation of Texas, which will cost the people \$15,000,000 out and out, and put that amount of money into the pockets of the speculating owners of Texan stock.

At the same time that these gentlemen are thus opposing the interests of the people, they ask the people to elect and appoint them to office and give them the whole patronage of the country. With great respect to these self-styled special friends of the people, I take the liberty to say that, in my humble opinion, instead of being called "democrats," "friends of the people," they should be called "monocrats," "friends of themselves."

A "democratic republican" is a friend of the people and of the Union; and if any person will point me to an act or declaration of Mr. Clay that shows he is not a friend of both, then I will admit that he has changed his politics. It is true that of late years the party who support him has been called the "whig party," and the members of it "whigs," being a short and convenient name, truly indicating their principles. But surely they are not the less for that democratic republicans. Who ever heard of an American whig who was not a friend of the people and of the Union? With our principles to stand on, and Mr. Clay for our leader, we are in no danger of wandering from true republicanism; and if any of the worthy members of the old republican party within the sound of my voice have been led astray by these monocrats taking a wrong name, I invite them to come home. They will have no difficulty in finding the way, for there is a guide-board at every corner, showing the road from "Polk and Texas" to "Clay and Country."

Fellow-citizens, Mr. Clay is a patriot, a lover of his country, of our blessed and glorious Union. A public life of forty years duration shows this. A history of his life would be a history of the country during most of that period. The present is not a fit occasion for such a history. I can only direct your attention to a few of the leading traits of his character as a statesman.

1. His views and measures have not been sectional. He has always gone for the Union, the whole Union, and nothing but the Union.

2. His patriotism is *disinterested*. Whenever a question of importance and interest has come upon the country, he has never waited to see the direction of the popular breeze before declaring his own views, but after forming his own opinions has availed himself of the first suitable occasion to express them. But a striking and conclusive evidence of his disinterestedness is found

in his proposition to distribute the proceeds of the public lands among the several states. When the mode of disposing of those lands was first agitated, instead of proposing or advocating their cession to the states in which they lay, of which his own was one, and thereby creating a Western interest in his own favor, his eye turned to the whole country, and not upon himself.

3. He never appeals to the ignoble and grovelling motives and passions of men to carry his measures. His aims are lofty, and he selects lofty means to accomplish them. He endeavors to bring his hearers up to his own standard, instead of descending to theirs.

4. His policy and measures, foreign and domestic, are pacific, and the latter eminently so. While he has ever been ready and prompt to maintain the true honor of the country in her foreign relations, he has never proposed or advocated a rash or unjust measure; and while ever firm in supporting the government in a just and necessary exercise of lawful and constitutional authority, he has never advised or countenanced the exercise of a doubtful power. And in the domestic conflicts which we have had, his voice has always been for peace. Witness his course on the admission of Missouri into the Union, and in the fearful struggle respecting the tariff in 1832.

5. He has always been the friend of *order*. To carry a favorite measure or gratify an uncontrolled passion, he never attempted to admit a state irregularly into the Union, as in the case of Michigan—nor encourage a rebellion, as in Rhode Island—nor last, though not least, violate a broad seal, as in the case of this state.

Mr. Clay is identified with, and almost the impersonation of, whig principles. At an early day he avowed and became the supporter of the principle that it is the duty of the General Government to provide the people with a safe and convenient currency, and has stood by it, through evil report and through good report. He originated and brought forward the measure for distributing the proceeds of the public lands among the several states. That measure is peculiarly his; so identified is he, and so long, steadily, and earnestly has he supported the principle of a protective tariff, that he is called “the father of the American system”—another name for the same thing. He took early and

decided ground against the project for annexing Texas to the Union: the country is grateful to him for his noble letter on that subject, and for the promptness with which he declared his views. He is all-worthy of our confidence.

It remains to speak of your own Frelinghuysen.

We are assembled in this place, where a beneficent Providence saw fit to bring him into life, and give him to the country and the world. The time and place are not suitable to dwell on the incidents of his pure and lovely life, to mark and admire the effects upon him of the subduing influence of the Gospel he professes. We can only allude to him as a public servant.

The year 1817 brought him into the public service of your state as attorney-general, and into communion with the visible Church of Christ. He continued to be your attorney-general for twelve years, and then, viz., in the year 1829, was elected your senator in Congress for six years. On the expiration of his term in 1835, he resumed the practice of law in your courts, in which he continued until 1839, when he was appointed chancellor of the university of our city, and there he has dwelt with us since. Although his duties, as your attorney-general and senator in Congress, were all discharged with eminent ability (for his talents are of the first order and his judgment profound), yet how far his Christian virtues are in advance of his civil qualities in the public mind! His civil and political life, though distinguished and full of usefulness and manly virtues, is comparatively absorbed and shut out from public view by his Christian course. He is, emphatically, a Christian patriot. His philanthropy is as broad as the habitations of men, and his patriotism commensurate with the Union. It is interesting and important, in reference to our duty at the coming election, to inquire what influences produced his nomination. Was the attention of the eminent men who composed the Whig Convention at Baltimore directed to him, and did they nominate him, and did the country rejoice in the nomination, because he had been an eminent lawyer in New Jersey? No. Because he had been a faithful and distinguished senator in Congress from that state? No. Because he was at the head of a large literary institution and a ripe scholar. No. Why, then? Because he was also a Christian. Youth of my country—beloved youth, remember this. And, fellow-citizens,



have we not all cause to be grateful, deeply grateful, that a peaceful and orderly influence like this prevails in our land, after the fifteen years of disorder, violence, and misrule through which we have passed? Does it not make your spirits buoyant, and fill you with lively hopes for the future? There is only one thin cloud between us and the realization of these hopes, and that is, that this nomination, though certain to succeed, may not succeed by such an overwhelming vote as the principle deserves upon which it was made.

Men of Somerset: I am sure that you do not require urging to come to the polls, one and all of you, and vote for your own Frelinghuysen; and do not let any old complaint against our ever-faithful and noble patriot of the West prevent you. Remember that to err is human, to forgive is divine; and do not fail to improve this last opportunity to honor and reward one of the most sagacious, wise, upright, and patriotic statesmen with whom any country was ever blessed.

The birthplace of FRELINGHUYSEN was signalized again yesterday as the scene of the greatest gathering of Jersey Blues that has probably been seen within the bounds of the state. Certainly nothing comparable to it has been witnessed in our day. \* \* \* The Hon. SAMUEL A. FOOT, of New York, being next introduced, was received with the most cordial greetings. His speech, of which we give the fullest practicable report, will be found to be a strong and convincing argument, calm, courteous, and comprehensive in its tone and terms, and it will, we trust, be carefully read and pondered.—*Newark Daily Advertiser*, Thursday Evening, August 8, 1844.

The whig speaking, so far, in the present political campaign, has been generally of a very creditable cast—direct, argumentative, frank in the avowal of principles and logical in their advocacy—without much declamation, with few appeals to passion or prejudice, and, with very few exceptions, courteous to opponents. Such, for instance, was the speech of Mr. Ketchum the other day on Long Island; and such is the excellent speech of Mr. Foot, delivered at Millstone, which we publish to-day. We are not very ardent politicians, though unwavering and energetic to the extent of our abilities; and we confess ourselves particularly pleased with such discourses as this of Mr. Foot, in which those seeking enlightenment find so clear and cogent inculcation of sound doctrines, while the most zealous opponent, who heard or may read it, will find himself conciliated, rather than hurt or displeased, by the manner in which his party and its doctrines are spoken of.

Mr. Foot had evidently prepared himself well for this address—as all

speakers should—for careful preparation is seen in the orderly arrangement of its topics, its well-chosen illustrations, and the strong array of evidence brought forward in support of its several propositions.

We do not intend to write a review of the speech, nor do we see any necessity for attempting to improve its treatment of the subjects discussed; but there is one course of argument, in relation to the Texas question, which we have not before seen introduced, and to which we would invite the reader's special attention.

It is certain that if Texas is annexed to the United States, some portion of it, if not the whole, will form an addition to the slaveholding portion of our Union. But, as Mr. Foot shows, the increase of slaveholding states does injustice to the free states, because, under the compromise of the Constitution, a certain description of property in the slave states is entitled to congressional representation, thus giving the inhabitants of those an undue preponderance—giving each voter, who is the holder of a hundred slaves, the same political force in the choice of representatives that is possessed by eleven citizens of a free state.

Now this is manifestly unjust, yet in fulfilment of the constitutional compromise it is submitted to by the citizens of the free states; peaceably submitted to, without resistance or complaint. But the citizens of the free states have a right to protest against the enlargement of the injustice by the admission of new slave states—most especially when these new states come in, not by the ordinary increase of population in our own territory, but by the annexation of another country. Even supposing the territory annexed to form equal numbers of free and slaveholding states, the wrong is not done away nor mitigated; the effect is but to add so many to the states in which the wrong is done, and so many to those on which it is inflicted.

On the subject of interference with the slave states, for the abolition of slavery, Mr. Foot truly says that the free states and their citizens should abstain from it; by the compromise of the Constitution the continuance of slavery is made the peculiar affair of the slave states, and to them it should be left. But the rule has another working. If the citizens of the Southern states deny to us the right of attempting to reduce the extent of slavery, as unjust and unconstitutional, we deny to them, on the same ground, the right of enlarging it, and with it, of course, that injustice to the free states, in the matter of congressional representation, to which we have adverted. If the Constitution protects the South, it must protect the North also.

These are strong points, and we thank Mr. Foot for bringing them so clearly and forcibly into view.—*N. Y. Commercial Advertiser*, Wednesday Afternoon, August 14.

No. XXXI.—Vol. 1, p. 235.

*International Copyright—Hear Both Sides.*

MESSRS. EDITORS:—I have lately read with pleasure and profit an unpretending, but sensible and well-written, pamphlet, by John Campbell, Esq., of this city, entitled, “Considerations and Arguments proving the Inexpediency of an International Copyright Law.” So much has been written and said by American and English authors in favor of such a law, and its opponents have been held up to the public in such odious lights, and the publishers of foreign works have been so often denounced as no better than thieves and robbers, that without giving the subject any particular attention, I had supposed there was only one side to the question, and that justice and fair dealing required the passage of the law.

The perusal of Mr. Campbell’s pamphlet, however, has not only shown me that there are two sides to the question, but led me to doubt seriously both the expediency and justice of such a law. If stronger arguments cannot be adduced in its favor than are contained in the “Address to the People of the United States in behalf of the American Copyright Club,” lately published in this city, then, for one, I say Mr. Campbell and those who act with him are right in opposing the measure.

It would promote the cause of truth and the best interest of the country to give copious extracts from this pamphlet to the public through the medium of your widely-circulating paper, but as you are the best judges of how much space you can spare for such an object, I shall conclude my remarks by expressing my warm and cordial thanks to Mr. Campbell for the information and instruction his pamphlet has given me, and earnestly recommending its perusal to all who love our institutions and expect to sustain them by instructing and enlightening the people.

A FRIEND OF TRUTH.

—*N. Y. Commercial Advertiser*, of January 18, 1844.

No. XXXII.—VOL. 1, p. 248.

*Biography of Ebenezer Foot, Counsellor-at-Law.*

Ebenezer Foot was the eldest son of John Foot, by his second wife, Mary Peck, and was born on the 6th of July, 1773, at Watertown, in the county of Litchfield, and state of Connecticut. His father was born, lived, and died in the same town. His grandfather was Doct. Thomas Foot, who spent most of his life and also died in that town. His grandfather lived and died—his father was born, lived, and died—and he was born on the same farm, which is still in the family, being now owned and occupied by his nephew, Mr. Hubert Scovill. John Foot, the father of Ebenezer, was an industrious and successful farmer. He had eight children, three sons and five daughters, to whose support and education he devoted the proceeds of his farm. His second son, John, and his youngest son, Samuel Alfred, received liberal educations at college. Ebenezer being the eldest, was designed by his father to be the farmer of the family, and remained on the farm and labored with him until he was twenty years of age. He then became anxious to change his pursuit. He wished to acquire an education and enter the profession of law; it being the expectation of the family that his brother John would enter the ministry. His parents did not oppose his wishes, and after the season of labor was over in the autumn of 1792, he left home, went to the neighboring town of Cheshire, and commenced classical studies under the tuition of the Rev. John Foot, with a view of preparing himself to enter college, and in the sophomore or junior class. He pursued these studies nearly two years, not, however, giving his whole time to them, as he was obliged to devote a considerable portion of it to teaching school for the purpose of earning in part the means of obtaining his education. Finding that full four years, if not more, would be required to complete a collegiate course of study, obliged as he was to devote a large portion of each year to teaching, he determined to abandon that object and enter at once upon the study of his profession. Accordingly he went to Litchfield, entered the law school of the Hon. Tapping Reeve, and commenced the study of the law.

This school deservedly had a high reputation, and furnished great facilities for acquiring a knowledge of legal science. Mr. Foot pursued his professional studies at and in connection with this school for two years, a portion of each year being spent in teaching. In December, 1796, he was admitted to the bar of the state of Connecticut, and, in the language of his license, allowed "full right and authority to practice, as attorney and counsellor-at-law, in all the courts, as well supreme as inferior, both of law and equity, throughout this state." Soon after obtaining his license, and without making any attempt to practice his profession in Connecticut, he removed to the state of New York, and established himself at Lansingburgh, in the county of Rensselaer. He reserved the small portion which his parents were able to give him until this time of his need. In February, 1797, he sold the land which his father had given him on his attaining his majority, and with the proceeds provided an outfit for the commencement of his career in life. He was a dutiful son, and left the paternal roof with the affection and blessing of pious parents.

Admission to the courts in the state of New York was at that time easy, and after a few months of professional study he was licensed to practice. His first license was given to him in November, 1797, by the Court of Common Pleas of Rensselaer County. His admission into the other and higher courts of the state followed soon afterwards. A strong constitution, a large and vigorous frame, a full and manly voice, a mature intellect, a ready and rough wit, together with uncommon self-reliance, fitted him for success in the profession which he had chosen. That success he obtained at once. He also became a prominent politician, and was soon an active and influential member of the old republican party. He early acquired the confidence of the leaders of that party in his adopted state, and in after years his political opponents, in consequence of the intimacy and friendship existing between him and the late Chief Justice Spencer, who was the leading spirit of the republican party of that day, used to call him "Spencer's Foot."

Troy proving to be a more fortunate location for a commercial town, and increasing more rapidly in business and population than Lansingburgh, and being also the shire town of the county.



Mr. Foot soon changed his residence to that place and entered into copartnership with John Bird, Esq., a gentleman of brilliant intellect and finished scholarship. Their copartnership continued several years. The sickness and early death of Mr. Bird dissolved it. In 1801, only four years after his admission to the bar, Mr. Foot had acquired considerable eminence in his profession. He had attracted the notice and obtained the friendship of Governor George Clinton. So high an estimate did the Governor put on his talents and worth, that in August of that year he caused him to be appointed assistant attorney-general for the district comprehending the counties of Columbia, Rensselaer, and Greene. His commission was signed by the Governor, and is dated the 13th of August, 1801. The duties of this office required the exertion of high professional talents, and they were discharged by Mr. Foot to the entire satisfaction of the public. He held the office several years and until a change in the party politics of the state caused a general change in official incumbents.

After the discontinuance of the professional connection between him and Mr. Bird, he pursued his profession alone for some time; but finding it impossible to attend the courts where his extensive practice required his presence almost constantly, and also give the requisite attention to the attorney's business in the office, he formed a new connection and entered into copartnership with a gentleman of high respectability, who had industry and tact for business, and was well versed in the practice of the law. This was a fortunate arrangement for both. They did a large business and were very prosperous. His partner gave his attention principally to the duties of an attorney and solicitor, which confined him to the office; while Mr. Foot performed those of a counsellor and advocate. He was almost constantly engaged in the trial and argument of causes. He excelled particularly in trials before juries; and in that branch of his profession had few, if any, superiors in this state. His influence and standing as a politician kept pace with his progress in his profession. He was an ardent, active, and able supporter of the principles of the republican party. Finding that the capital of the state afforded a more convenient and suitable location for him than the then village of Troy, he dissolved his copartnership in August,

1808, and shortly afterwards removed to the city of Albany. There he continued the practice of his profession until his death, having generally a junior partner to attend to the business in the office. During this period he took an active part in politics, wrote considerably for the press, and exerted a strong influence in favor of the side he espoused. He was on one occasion a prominent candidate for the office of United States senator, and his friends for a time believed they should accomplish his election, but did not.

His young and only surviving brother, Samuel A. Foot, entered his office as a clerk in the autumn of 1811. Samuel North, Esq., was then his partner. Mr. North's ill health obliged him to withdraw from the duties of his profession in February, 1812. From that time Mr. Foot's brother took charge of the business of his office. Mr. North's illness proved fatal. He died in January, 1813, while yet a young man, beloved and admired in life, and mourned in death, for his moral qualities and intellectual attainments. The death of Mr. North opened the way for a professional connection between Mr. Foot and his brother, who had then just attained his majority, but had not studied law the length of time required by the rules of court for admission to the bar. Mr. Foot, however, availing himself of the time his brother had spent in his office while a youth, and before entering college, made a special application to the court, who dispensed with their rule in favor of his brother, and admitted him to an examination. He was found qualified, received his license, and entered into co-partnership with his brother in January, 1813. This connection was happy and prosperous, but of short duration. Mr. Foot attended the Circuit Court of Rensselaer County, held at Troy in the early part of July, 1814. He was engaged in several important trials; the weather was unusually warm, and his temperament ardent. Over-exertion or some other imperceptible cause, probably the former, brought upon him a bilious fever. He returned home, medical aid was obtained, and nothing serious apprehended for some days. But on the fourth or fifth day of his illness the fever began to rage, and the disease assumed an alarming aspect. On the 21st of that month, and in the 42d year of his age, after a sickness of only eleven days, death seized him, and after a violent and painful struggle, in which his robust con-

stitution and manly frame maintained for hours a conflict with the king of terrors, he yielded and expired in the full maturity of his physical and intellectual powers.

Mr. Foot was a large man, full six feet in height, had a good constitution, and a well-formed and muscular frame. His forehead was high, and his eyes dark and remarkably bright. Cut down unexpectedly and early in life, no portrait of him was taken, and his likeness only remains in the recollection of those who knew and now survive him. He was married to Elizabeth Colt in December, 1803. She survived him, and also a daughter and only child, born in December, 1804. His daughter was married some years after his death to Lebbeus Booth, Esq.

Mr. Foot had a strong and active mind, a warm and generous heart. Had he enjoyed the advantages of an early and thorough education he would have had few equals in this country. As he was, he had no superiors in this state in those contests at the bar where ready wit, strong and discriminating judgment, powerful reasoning, and great intellectual resources were essential to success. He wrote as he spoke, with vigor and wit, but without the elegance or polish of a finished scholar. A brief notice like the present will not permit a reference to any of the important causes in which he was engaged, nor extracts from his speeches, many of which were published in the newspapers and pamphlets of the day, nor even a recital of the many anecdotes told of him, and which show the force and brilliancy of his unpolished but exhaustless and spicy wit.

Mr. Foot was generous and liberal to a fault. He was more ready to help his relatives and friends than provide for himself. He contributed liberally and freely to aid his brother Samuel Alfred in obtaining an education, and although that brother by his success in his profession was able afterwards to repay, and did, with interest, all these fraternal offerings, yet that did not diminish the merit of the original advance which was made without security, and probably without any expectation of a return.

One act of Mr. Foot's life should not be omitted, nor forgotten, whenever his name is mentioned.

The present Female Academy in the city of Albany owes its existence mainly, if not entirely, to him. It is now, and has been

for some years, one of the most valuable and useful institutions in this country. It was commenced in February, 1814, under the name of "Union School in Montgomery Street." The original subscription paper is now before the writer. It bears date on the 24th of that month. The subscriptions are payable to Mr. Foot, and it is within the knowledge and recollection of the writer, that he started the project and obtained most of the subscriptions. Whatever was his motive and aim, whether to qualify his own daughter or those of his neighbors and friends, for the duties of American ladies, or, more expansive still, to elevate and adorn the female character, and store the female mind with useful knowledge, his name should be kindly remembered by every pupil who has enjoyed or may enjoy the benefits of the institution, and by every friend of female education.

S. A. F.

GENEVA, *September, 1848.*

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No. XXXIII.—VOL. 1, p. 249.

*Objections to Constitution of 1846.*

FROM THE COMMERCIAL ADVERTISER OF OCTOBER 14, 1846.

MESSRS. EDITORS:—Please to permit a subscriber and voter to present to his fellow-citizens, through the medium of your paper, some serious objections to the new constitution, which will induce him, and, he hopes, will induce all, to vote against it.

*First.*—By the present constitution and laws of this state, no one can be a witness in a court of justice if he does not believe in the existence of a God who will punish him for false swearing.

The new constitution contains the following provision: "*And no person shall be rendered incompetent to be a witness on account of his opinion on matters of religious belief.*"

The effect of this opinion is obvious, and removes one of our present securities for life, liberty, and property.

*Second.*—By the present constitution our judges are appointed by the Governor and senate, and hold their offices during good

behavior and until sixty years of age. By the new constitution they are elected by the people, and hold their offices for the term of eight years, and are re-eligible.

The effect of this provision is also obvious. Its tendency to destroy the independence and purity of our judiciary, and render life, liberty, and property insecure, is manifest.

*Third.*—Our present constitution contains the following provision: “And whereas the ministers of the Gospel are, by their profession, dedicated to the service of God and the cure of souls, and ought not to be diverted from the great duties of their functions, therefore no minister of the Gospel, or priest of any denomination whatsoever, shall, at any time hereafter, under any pretence or description whatever, be eligible to, or capable of holding, any civil or military office or place within this state.”

This provision is not in the new constitution; hence, ministers of the Gospel are eligible to all civil and military offices. Church and state are thus united in the worst form they can assume in a Republican Government.

*Fourth.*—The new constitution contains a large amount of legislation in detail, a considerable portion of which is of doubtful expediency. This, with other evils, will lead either to violations of the constitution, or to sudden calls of future conventions to make hasty amendments which the exigencies of the state may require.

A VOTER.

No. XXXIV.—VOL. 1, p. 249.

*Eulogistic Valedictory.*

*Court for the Correction of Errors.*

ALBANY, Tuesday, November 24.

Present — Lieutenant-Governor Gardiner, Chancellor Walworth, and twenty-nine senators.

Mr. FOOT, at the close of his argument in the cause of Denny and others *vs.* The Manhattan Bank, paid the following just and merited tribute of respect to the Court:



*Mr. President and Gentlemen:*—The power which instituted this tribunal, almost a century ago, has decreed its dissolution; and this is the last cause I shall be allowed the honor of arguing before you. Having commenced my practice in this Court, soon after my admission to the bar, I have been often before it for more than twenty-five years, and a constant witness of its extensive and useful labors.

The thought that I am not to appear before it again is, at at least to me, impressive and affecting. This tribunal has always commanded, and still enjoys, the confidence and respect of the bar who are honored with its practice. During its administration of the law the rights of person and property in this state have been well protected. For myself, I part with the Court with the deepest regret, and earnestly hope that the tribunal which has been substituted for it may discharge its duties with equal fidelity and ability.

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No. XXXV.—VOL 1, p. 265.

*Republic of Liberia.*

Whereas, information having been received that the Republic of Liberia has applied to the General Government of the United States to be recognized as an independent nation, that such recognition has not been made, and that the present administration of our General Government still hold the measure under consideration; therefore,

*Resolved*, That this meeting respectfully but earnestly request the President of the United States to recognize the Republic of Liberia as an independent nation, and enter into a commercial treaty with it at the earliest period consistent with the discharge of the duties of his high station.

*Resolved*, That the colony of Liberia was planted on the western coast of Africa by the charity of American citizens, without distinction of party, political or sectional; that the enterprise was commenced, fostered, and perfected by the warm hearts and enlightened minds of American men and women north and

south of the Potomac, who united on the broad and solid basis of American philanthropy to elevate, morally and intellectually, the free colored population of the United States, and confer upon them the blessings of civil and religious liberty.

*Resolved*, That the withholding by the present administration of our Federal Government from the colonists of Liberia, now happily constituting a prosperous, moral, and well-governed republic, the rights and courtesies due to an independent nation, will disappoint the just expectations of a large body of our best citizens, and greatly weaken, if it does not destroy, one of the strong bonds which unite northern and southern hearts on one of the most important subjects for national consideration and action.

*Resolved*, That the proceedings of this meeting be duly authenticated and transmitted to the Hon. John M. Clayton, Secretary of State of the United States, and that he be respectfully requested to present the same to the President for his consideration—and that a copy thereof be published in the Geneva Courier and Geneva Gazette.

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No. XXXVI.—VOL. 1, p. 270.

*The Value of System in the Occupations of Life.*

My object in accepting the invitation given me to deliver a lecture before "The Young Men's Association" of this city, was the hope of saying something which would benefit my hearers—something which would aid them in discharging their duties in life, and make them better and more useful members of society. Occasions like the present are too often availed of to present some new theory or speculation, or dazzle an audience with some bold, untried, and impracticable proposition in physics or morals; and the hour is thus whiled away in listening to glowing exhibitions of untutored genius, or the wild vagaries of an erratic intellect, without any abiding or improving influence exerted upon the listeners.

The task which I have assigned to myself may be considered

more humble, and justly, perhaps, entitle me to the epithet of a homespun utilitarian; yet the consciousness of an honest endeavor to do the young men of Buffalo a real service, though it may prove a small one, will fully reward me for the time and labor bestowed; and if I fail to interest and instruct, I trust my hearers will do me the justice to believe that I earnestly desired to do so.

My subject is, *The Value of System in the Occupations of Life.*

In discoursing on this subject, it is important to understand what is meant by *system*, and to distinguish between it and *order* and *method*. These terms are often loosely applied, and are sometimes used synonymously, though in truth they express very different things. In conducting human affairs or managing business, there may be *method* without *order* or *system*, and *order* without *system*; but there can be no effective *system* without both *order* and *method*. Strictly and philologically, *system* means the arrangement of individuals or parts so as to constitute a perfect whole, and applies both to objects at rest and to actions. *Order* also applies to both; and when applied to objects at rest, means the uniform position of individuals or parts, which constitute the whole object; and when to actions, the uniform movements of the individuals or parts, which constitute the whole action. *Method* applies only to actions, and means the *manner* in which an action is performed. The force of these terms, and the ideas they represent, will distinctly appear by applying them to the arrangement and movements of that family of the heavenly bodies of which our earth is one. The arrangement of the positions and motions of the sun, the planets and their satellites, is a *system*, and usually called the *Copernican System*, from the name of the discoverer. The uniform relative positions which these heavenly bodies maintain, and their uniform movements, constitute their *order*, and the counteracting influence of the two opposite forces, by which they are retained in their positions, and by which their movements are regulated, is the *method* by which the system is carried into execution. So in regard to life. An arrangement of the different portions of our time, so as to discharge our duties in the best manner, is *system*; a steady and uniform adherence to this arrangement is *order*; and the manner

of carrying out the system is *method*. Thus we see that *order* and *method* are results from, and consequents of, *system*. *System*, therefore, is the great thing. *It* is the foundation and the source of all the benefits which arise from a life of order and regularity.

One of the peculiar and commendable characteristics of our country is the fact that no man can be truly respectable without he has some useful occupation. Fortunately, we have no privileged class of wealthy idlers. Property and honors are open to the efforts of all alike; and that man is marked, and held in light esteem, who is not engaged in some laudable pursuit. The great and almost only distinction between men among us is the success with which they prosecute their plans of self-aggrandizement. There are a few choice spirits in the land, who, under the influence of an enlarged philanthropy, or the more exalted principle of Christian love, spend their lives, or large portions of their time, in promoting the good of their fellow-men. But to whatever meritorious object we devote our lives—whether to our own advancement or the well-being of others, or to both united—it is desirable, indeed it is of the greatest consequence, that our energies should be applied in the best and most effective manner; that cannot be done without system, but can be with it. Each of my hearers can doubtless mention, within the circle of his acquaintances, one or more persons of industrious and economical habits, and with fair qualifications for the business they are pursuing, who yet barely bring the year about without making any acquisitions of property or increasing their standing in society: while there are others, who, with no better habits or qualifications for business, steadily and yearly advance in wealth and reputation. A close scrutiny will show that in almost if not quite every instance, the difference is owing to the absence or presence of system. While the unsuccessful man has none, and his life is spent comparatively in vain, the successful man has a good one, by which every hour is applied in the most effective manner. This is particularly true of persons engaged in intellectual labor. While some, gifted with the highest powers of thought, only startle and delight the world, by an occasional, and, as it were, casual, display of the rich treasures of their intellects, without producing any abiding effect upon the world of mind by a steady and well-directed application of their talents, and are scarcely

remembered after their obituaries are read—others, with endowments less brilliant and powerful, but steadily directed and applied, effect results which not only astonish, delight, and improve the age they live in, but all future ages, and acquire for themselves imperishable names. If it be asked why there is so great a difference between the two, the ready answer is—the influence of system upon their lives. Of this truth the history of the human family is full of eminent examples.

The limits of a lecture will allow me to mention only a few of them.

Our Washington is an illustrious one. He commenced life without the advantages of an early and thorough education. He had not fortune, or distinguished ancestry, or, indeed, any incidental advantage over the generality of respectable youth in this country. Yet what did he attain by his own unaided efforts? At nineteen he was appointed one of the adjutants-general of Virginia, with the rank of major. At twenty-one, he was commissioned to wait upon and deliver a message to the commander of the French forces in the wilderness beyond the Alleghany mountains; and on his return, after an absence of two months and a half, his journal, prepared for the inspection of the Lieutenant-Governor of Virginia, was published. It did him great credit, and drew public attention to him. A few months after he was appointed lieutenant-colonel of a regiment, raised to defend the frontier. When only twenty-three he was selected by General Braddock as one of his aides; and in the same year, after the defeat of that general, was appointed colonel of a regiment, and, in his commission, designated commander-in-chief of all the forces of Virginia, and allowed the uncommon privilege of naming his own field-officers. From twenty-three to twenty-six he was actively engaged in military service. He then married, and devoted himself to agricultural pursuits until he was forty-two years of age. When thus far advanced in life he was elected a delegate to Congress, and the next year appointed commander-in-chief of the American army. He surrendered his commission in 1783, when fifty-one years of age. He then resumed his agricultural occupation, and followed it earnestly for four years, when he was elected a delegate to the convention for forming our Constitution, and chosen its president. In 1789, being fifty-seven



years of age, he was elected President of the United States, and again for a second term in 1793. He declined a third election, and returned to his plantation in 1797, aged sixty-five. Two years afterwards he was appointed commander-in-chief of the armies of the United States. He died in December 1799, in the sixty-eighth year of his age.

General Washington had not splendid talents, nor was he a man of great learning. He was distinguished intellectually only for judgment and good sense. His moral qualities were not extraordinary. They were excellent, but by no means beyond those which every young man may reasonably hope to attain. Still, what a life was his! What an amount of useful labor he performed! What a record, name, and fame he has left behind him! With a mere scanty English education, he became master of a pure, elegant, and energetic style of writing. He left an immense amount of manuscripts, all neatly and orderly arranged, and full of wisdom and instruction. He kept himself an accurate and detailed account of all his receipts and expenditures for the public. He attended carefully to all his own private business; paid his debts with punctuality, and lost nothing for want of attention. All his social duties were punctually performed. He neglected no one entitled to his notice. The claims of friendship or the calls of charity were never unheeded. In a word, every known duty was promptly and faithfully performed; and it has been truly said of him "that the whole range of history does not present a character on which posterity can dwell with such entire and unmixed admiration."

In reading his life, as written by different authors, I have often asked myself, How is it that this man, without any uncommon advantages, or any extraordinary endowment, performed so well every duty, and accomplished so much useful labor, in a life which did not even reach three-score years and ten? The answer, the secret, is, that he had an excellent system of life, to which he steadily adhered. He had a time for every duty, and performed every duty in its appropriate time. A careful scrutiny of his life will convince all of this.

Contemporary with Washington, and in the same state, lived Patrick Henry—a wonderful man. Nature was profuse in bestowing upon him her richest gifts. His mind was clear, strong,

and brilliant; his heart, warm, generous, sincere, and pure; his frame, manly and vigorous. His parentage was more than respectable; it may be said to have been distinguished. He had an opportunity of acquiring an early and good education. He lived in the days of the Revolution, and in the course of his life was a lawyer, a patriot, a soldier, and a statesman, and in each of these characters had the best of opportunities of acquiring an imperishable name, and leaving the richest legacies of wisdom and virtue to his country. The extraordinary qualities of his mind and heart made him the idol of Virginia for more than thirty years; and she conferred upon him, with a liberal hand, her highest official honors. Still, his life was a splendid failure, and the cause of that failure is full of valuable instruction.

Mr. Henry died in 1799. at the age of sixty-three; and six years afterwards William Wirt, already a polished scholar and eminent lawyer, commenced collecting materials for his biography, and after ten years of active and persevering search, in all quarters and from all persons, for everything which Patrick Henry had said or done in his lifetime, there was gathered together all which that gifted man had left for the benefit of his country and the improvement of posterity, and that was comparatively nothing. But we can better estimate the meagerness of the legacy when, by a brief survey of his life, we look at the facilities afforded him for acquiring and leaving a rich inheritance.

His parents were educated, accomplished, well-connected, and highly respected. They had the means, and desired to give their children educations. But Patrick was idle and irregular. "Hence," says his biographer, "instead of system, or any semblance of regularity in his studies, his efforts were always desultory, and became more and more rare." He thus lost the advantages of an education, and attempted to gain a livelihood by merchandising. In this he failed at the end of the first year, for the want of "that accuracy and persevering vigor which are essential to the merchant." After his failure, when entirely destitute of any means of support, and only eighteen years of age, he married the daughter of an honest but poor farmer in the neighborhood. The newly-married pair suffered for the want of the necessities of life. In this strait, Mr. Henry proposed to

become a farmer. His father acceded to the proposal, and provided him a farm. But again, says his biographer, "his unconquerable aversion to every species of systematic labor drove him necessarily, after a trial of two years, to abandon this pursuit altogether." He sold all his property and effects for cash, and again attempted merchandise. In this he failed again; for "the same want of method" produced like ruinous effects, and he was left a bankrupt. He was now distressed by poverty, and went, with his wife and children, to live with her father, who kept a tavern. In this emergency he determined to study law, being conscious of possessing powers which would enable him to excel in that profession. At length, when twenty-four years of age, he gained admission to the bar. But the unregulated character of his mind prevented him from meeting with success in his new calling, and he passed several years in obscurity and great want. Finally, in 1764, after he had been at the bar four years, he was employed in a popular cause, and had an opportunity of displaying his peculiar talents as an orator. He was bold, erratic, impassioned. His oratory caught and delighted the popular ear. Ever afterwards he was eminent in his profession, and his aid sought in cases adapted to his talents. His professional efforts, however, were always more brilliant than solid. In 1765, Mr. Henry was elected a member of the House of Burgesses in Virginia, and taking the side of his country, the peculiar style of his eloquence gave him a most commanding position, and placed him, if not first, certainly among the very first, who led the way in that colony to the Revolution and our independence. In August, 1774, he was elected to our Continental Congress, which assembled the following month in Philadelphia. He opened the proceedings of that august assembly with one of his most splendid oratorical efforts. "He sat down amidst expressions of astonishment and applause." "But when called down from the heights of declamation to that severer test of intellectual excellence, the details of business, he found himself in a body of cool-headed, reflecting, and most able men, by whom he was completely thrown into the shade." He was on the committee, and drew the petition to the king. It was a failure; was laid on the table, and a substitute, prepared by Mr. Dickinson, adopted in its place. On this incident, Mr. Henry's biographer remarks:

“That notwithstanding the wonderful gifts which he had derived from nature, he lived himself to deplore his early neglect of literature. But for this neglect, that imperishable trophy, won by the pen of Mr. John Dickinson, would have been his; and the fame of his genius, instead of resting on tradition, or the short-lived report of his present biographer, would have flourished on the immortal pages of American history.”

Mr. Henry was a delegate to the same Congress for the year 1775, but did not distinguish himself.

His patriotic ardor and personal prowess stimulated him to plan and lead the first military expedition which was undertaken in Virginia against royal authority; and when that state, in July, 1775, organized a military force to resist British rule, Mr. Henry was appointed colonel of the first regiment, and commander-in-chief of the whole. He found no opportunity, however, to exhibit military talent, or render any important military service to his state or country. Considering himself aggrieved by not receiving a commission as brigadier-general in the continental army, he resigned, in February, 1776, his commission as commander-in-chief of the Virginia forces. He was immediately elected a delegate from Hanover county to the convention called to form a constitution for the state. The constitution was adopted in June, 1776, and Mr. Henry was elected the first Governor. He was re-elected unanimously in 1777; and again in 1778. In 1779 he declined a re-election, and resumed the practice of the law. In 1780 he was a delegate to the Assembly, and continued to represent his county in the Legislature of the state until the close of the year 1784, when he was again elected Governor for the term of three years. In the fall of 1786, while yet a year remained of his constitutional term, Mr. Henry was under the necessity of retiring from the office of Governor, on account of the inadequacy of the salary to the support of his family, and the amount of debts he found himself involved in, and which for the moment he saw no hope of paying but by the sacrifice of a part of a plantation he had purchased some years before.

In December, 1786, Mr. Henry was appointed by the Legislature one of seven delegates to meet a convention to be held the next year in Philadelphia, to revise the old, or form a new, Federal Constitution. The same cause which constrained him to retire from the executive chair of state, obliged him to decline

this honorable call of his country. On resigning the government, he retired to his plantation "and endeavored to cast about for the means of extricating himself from his debts. At the age of fifty, worn down by more than twenty years of arduous service in the cause of his country, eighteen of which had been occupied by the toils and tempests of the Revolution, it was natural for him to wish for rest, and to seek some secure and placid port in which he might repose himself from the fatigues of the storm. This, however, was denied him;" and "he had now, in his old age, to provide for his family." He resumed the practice of his profession, and prosecuted it steadily for six years. In 1788 he was a member of the state convention called to adopt the Federal Constitution, and opposed it with all his influence and power, but unsuccessfully. Having improved his circumstances in 1794, "he bade a final adieu to his profession, and retired to the bosom of his own family." Alarmed at the state of the country, Mr. Henry came out from his retirement in the spring of 1799, offered himself as a candidate, and was elected a member of the Legislature. But death removed him from the approaching conflicts of political and party strife. He died as he had lived, admired for his talents and loved for his virtues.

This brief presentation of the events of Mr. Henry's life shows what extraordinary opportunities he had for acquiring the most enduring fame, and leaving to his country and the world the richest intellectual treasures. But what did he leave? Let his diligent and faithful biographer answer. Mr. Wirt says, that Mr. Henry *left no manuscripts*, and remarks in his preface to his book, that the reader of the biography "will be certainly disappointed *in the matter itself* of the work; for notwithstanding all his exertions, he is entirely conscious that the materials which he has been able to collect are scanty and meagre, and utterly disproportionate to the great fame of Mr. Henry." It is probable that much of what was once known of him had perished before the author commenced his researches—that is, within six years after his death.

This anticipated disappointment was realized after the work appeared, and Mr. Wirt added nothing to his own fame by writing it. He was severely criticised and his book sharply handled in several quarters. Mr. Kennedy, who has written a



most interesting biography of Mr. Wirt, apologizes for the defects of his life of Henry in the following language:

“The life of Henry was written under such disadvantages as to give many plausible grounds for this assault. We have seen, in the course of this narrative, how much the author was embarrassed by the nature of his task. Patrick Henry, in the public mind of Virginia, was a *beau ideal* of all that was marvellous and grand in an orator and a patriot. His fame rested upon a tradition which represented a great outline of an intellectual giant, touched with but a few misty shadowings of its proportions. There was really nothing tangible to the historian, by which he might draw an accurate picture of the man, and bring his greatness to the test of that measurement with which envious and reluctant disputants of his renown would be alone content. There is a remarkable paucity of material extant for his biography. Separating him from the history of the state in which he lived, and of the time—the public affairs in which he was called to act—all that is positively and distinctly known of him may be told in a few pages. He was an orator, and yet no perfect speech of his survives. He was a statesman, but with a limited record of his public acts. He was a lawyer, but far from being skilled in the lore of his profession. He was a wise and acute observer of mankind, a philosopher, a deep and original thinker—yet not a paper has he left behind him to preserve the treasures of a mind which teemed with instruction and beauty. The rich fruit, as it ripened, fell to earth ungathered, and gave back its subtle essence to the atmosphere in which it had been engendered—posterity nothing the gainer from its prodigal affluence. An undefined remembrance of great power only survived.”

From whence has arisen the posthumous barrenness of this gigantic intellect, this paucity of material for his biography? Has it sprung from any material defect of his mind? Certainly not; for this truthful biographer says, “Mr. Henry is alleged, by those who had the best opportunities of knowing him, to have been not inferior, either in public or private virtue, to any patriot of the Revolution; and he was confessedly superior to them all in that combination of bold, hardy, adventurous, splendid, and solid qualifications, which are so peculiarly fitted to revolutionary times.”

Where, then, shall we find the cause of the fleeting character of the fame, and of the meagerness of the intellectual inheritance, which this highly favored man has left to posterity? My hearers need not be told that we shall find it in the want of a system of life, by which his great and wonderful powers were steadily and

beneficially applied, and their rich products garnered up for the use of future ages.

John Quincy Adams, whose name is identified with the history of our country, is a striking example of the value of a good system of life. To it he is indebted, in a great degree, for his imperishable fame, and his country for the great amount of useful knowledge which he gathered, and has preserved for the benefit of the present and future generations. He had an hour for every study and duty. His system was so judiciously arranged and rigidly adhered to, that his hours for business or study were not interrupted by company, nor those for company or other social duties by business or study. His life rolled on with a regularity like that of the orb on which he dwelt. His rule was to rise at 4 o'clock in the morning, and devote its silent hours to study, and to retire to rest at 10 o'clock in the evening. His systematic industry is worthy of imitation by every American youth. His life, when fully written, will be a rich gift to his country.

There died in the city of New York a few years since, a gentleman, with whom I had the honor of an acquaintance, who was an excellent specimen of a true merchant. Regard for domestic and filial delicacy alone prevents me from naming him. He was in active commercial business forty-five years, and made a very large fortune, exceeding two millions and a half of dollars, which was the fruit of legitimate trade, as he never engaged in speculations aside from his regular business. He began early, and pursued through his whole career a system of life and business. Notwithstanding his extensive and successful trade, numerous duties, and ultimately large fortune, he always kept his own books of account, and conducted his own correspondence, and had abundance of time for both. He was never hurried, or obliged to labor at unseasonable hours. He had a designated time for every duty, and for every part or branch of his business. This, too, he conducted on a settled system, from which he never departed, and the result was, sure and great gains, without anxiety or extraordinary exertions.

An active professional career as a lawyer for nearly thirty years in the cities of Albany and New York, and nearly two-thirds of that time in the latter city, has brought under my observation a

great many failures in mercantile and other kinds of business, and I do not recollect a single instance in which the failure was not attributable either to a want of, or departure from, a systematic plan for conducting the business. A man may possibly fail by reason of some unforeseen event, which no human foresight could guard against, even when prosecuting his business on a good system ; but the instances are very rare indeed.

One of the greatest benefits of system consists in the leisure and relief from hurry which it always gives to the systematist. No matter how extensive his business, how numerous his engagements, or how various his studies, he will always have time for them all, and to spare. This secures him against mistakes from precipitation—gives him the advantage of deliberation in everything he does, and furnishes him with leisure for a great variety of minor duties and enjoyments which do not enter specifically into his plan of life. It wholly relieves him, also, from a sense of continued pressure by his business and duties, which is a great disturber of one's peace, and very unfriendly to a contented and happy frame of mind, and to all successful mental effort. Without system, every man is hurried and pressed, although his duties may be few, his engagements limited, and his business small. The pressure and consequent discomfort does not, by any means, depend so much on the number and extent of our duties as on our arrangements for the discharge of them. All experience proves this, and the proposition is too clear to require extended illustration. Mr. Wirt expresses it forcibly, because naturally and experimentally, in one of his familiar letters. He says to his friend: "I owe you several letters, which, if you insist on *punctilio*, you must let me pay you as I can, for I am very busy; and though not lazy, what comes to pretty nearly the same thing, *unsystematic*, and of course pressed and oppressed by my business." Yes, every one, who is unsystematic, is pressed and oppressed by his business, whether it be large or small.

Next to a spirit born again and a heart renewed in the image of his Maker, is a good system of life to protect a young man, or, indeed, a man of any age, against temptations to vice. No one but a deliberate reprobate, already lost for this world and the world to come, in forming his plan of life will embrace within it the commission of crime, or an undue indulgence of his appetites

and passions. On the contrary, every young man who has only a single virtuous impulse left, and certainly all who are under the influence of moral feelings, in settling their system of life, will establish it on exalted principles of virtue. A pursuit of their system will retain them in the paths of purity, and every influence which it exerts upon their lives will be in favor of moral principle. A judicious plan, steadily adhered to, will make a man all that he can make himself; and if his plan embraces, as it will if he has had a Christian education, reconciliation to his God through a Redeemer, he will become, by the spirit of grace, an heir of glory.

Our thoughts are supposed by many to be beyond our control; and too few make any effort to regulate them, or give them a right and useful direction. But reason and revelation teach us, that we are the masters of our thoughts, and responsible for their good or evil tendency to Him who "is a discernor of the thoughts and intents of the heart." My present purpose will be best answered by asking each of my auditors to inquire of himself—how many of his thoughts to-day, or yesterday, were such as he would be willing to rise and declare before this assembly, or communicate to his most intimate companion, or bring into review before his Maker; and how many, or what, proportion of his thoughts were such that he either cannot recall them at all, or if he can, would be humbled by a review of them? A more pertinent inquiry still is—how many and what proportion of your thoughts to-day, yesterday, the week, month, or year past, have been directed to useful and practical ends; and how many, and what, portion have been wasted on vain, unreal, and utterly useless topics? Have you attempted to control and direct your thoughts to beneficial and valuable purposes, or have you let them run riot and spend themselves in castle-building? Honest answers to these questions will show every one how great an amount of intellectual power he wastes, or perhaps worse than wastes, every day of his life. One of the greatest diversities in human character, and one of the greatest differences in men in regard to their position in life, arises from an ability to master their thoughts and direct them in useful channels. This can be done, and effectually done, by establishing a system for the use and application of our mental powers, by which each portion of

the day shall be designated and set apart for reflection or meditation upon some given topic, or the investigation of some given subject. The keeping of a diary, and noting at the end of the day or the beginning of the next one, how our thoughts have been occupied the day previous, will furnish a check against the waste of them, and materially aid in bringing them into subjection, and giving them a practical and useful direction. A fair trial will show every one, that the operations of the mind may be systematized, as well as the actions of the body, and any person who makes the experiment, and prosecutes it to a successful issue, will find himself far in advance of his contemporaries in every desirable acquisition.

In no sphere of its influence does system bring richer and sweeter rewards than in domestic life. A family of children reared and educated upon such a plan as affectionate parents in sober thoughtfulness will form, cannot but have the blessing of heaven, and bring a flood of joy to parental hearts. A household conducted on a system, which embraces duty to God, reciprocal duties of husband and wife, parents and children, principals and domestics, is an approximation upon earth to the harmony and bliss of a celestial home.

But there is one teacher and illustrator of the value of system, whose voice is potential and silences all others. He is the Omniscient One. Look at the heavens above, and the earth beneath and around you. They speak universally and impressively one word, and that is, *system*. Look at the moral government of God—consider the harmony of its parts, the perfection of its wisdom and justice, its adaption to the wants of the immortal beings who are the subjects of it—and see how perfect the system which pervades it.

A single remark in conclusion. The man, be he young or old, who is not spending his life, conducting his business, pursuing his profession or studies upon an established system, is wasting his energies, abusing the gifts of a beneficent Creator, living to no valuable purpose, and will die unmourned.

S. A. FOOT.

*February 16, 1850.*



No. XXXVII.—VOL. 1, p. 278.

*Educational Progress.*

Among the rapid strides which our country is making in power, wealth, territory, and population, and in the expansion and development of the intellectual faculties of the great mass of the nation, no movement is more striking, or deserves more marked attention, than the series of measures which have been adopted in several states of the Union, and especially in this state, to raise up and send forth for duty a corps of teachers, male and female, well-trained, instructed, and qualified to discharge the high function of teaching, guiding, and unfolding the youthful mind.

The Normal School, established by the Legislature in 1844, and located at Albany, is the most prominent of the measures adopted by this state. It stands out in bold relief before the country, by reason of the liberal pecuniary provision which the Legislature made for its establishment and support; the extent and suitableness of the building erected for it; the number and character of the scholars; and the high qualifications of the principal and subordinate instructors. The amount of benefit which this institution has already conferred, and will continue to confer, on the rising generations of this state and nation, no finite mind can measure. Without knowledge and virtue our institutions cannot be sustained, nor the high destiny of our country accomplished. No one measure is more necessary to the diffusion of knowledge and sound principles among the people than a full supply of competent teachers for our youth. Experience shows that progress in knowledge depends more on the teacher than the learner. A dull boy may become a fair scholar, and a useful man, under judicious discipline and faithful instruction; while a bright boy may become an idler and a desperado under chastisement inflicted in passion, and instruction attempted by ignorance.

In furtherance of this great measure of supplying the country with a sufficiency of competent teachers, many books have been

written within the last few years, the design of which is to instruct those engaged in teaching, in respect to their employment, and thereby increase their qualifications for the high duties they are discharging. Several of these books are decidedly meritorious, and must be very desirable to teachers; but I have met with none which, in my judgment, even compare with a work entitled "The Logic and Utility of Mathematics," pp. 351, recently written by Charles Davies, LL.D., late professor of mathematics at the Military Academy, West Point, and published by A. S. Barnes & Co., New York, and H. W. Derby & Co., Cincinnati.

The limits of a newspaper article will not allow a review and analysis of a work like this. All that can be said of it must be of a very general character. Whoever *studies* the book (for a mere reader of it will never reach its rich treasures), will find it an uncommon production. It is the fruit of matured intellect, long experience in teaching, and profound knowledge of the exact sciences. Professor Davies brought to the task of writing it unusual qualifications. He was educated at West Point. After a short term of military duty in the war of 1812, his distinguished scholarship led to his recall to the Military Academy, where he first discharged the duties of assistant professor of mathematics, and afterwards those of professor. He was professor and head of the mathematical department of that institution for more than twenty years. Impaired health induced him to resign in 1837. While he occupied the mathematical chair, the Academy attained the high distinction it still holds for the perfection of its course of instruction in the exact sciences. Before he resigned, several volumes of his system of mathematics had been published. A short tour to Europe restored his health, and on his return he resumed the writing and preparation for the press of the residue of the volumes. He has now completed his system, consisting of twenty-one volumes, large and small. His "Logic and Utility of Mathematics" closes the list. It is the crowning work of more than thirty years of study and active duty in the cause of instruction.

His various books, which contain a full course of mathematical instruction, are well known throughout the country. They are used in most of our best schools, academies, and colleges. No better evidence of their value can be given than the

amount daily sold by the publishers. The average daily sale exceeds five hundred, and is steadily and rapidly increasing. The "Logic" is already in the third edition. This book develops the principles of right reasoning, and shows that all operations of the mind, in searching for truth by ratiocination, are the same, whether exercised upon moral or mathematical subjects. It unfolds the first movements of the reasoning faculties of the child, and shows how to draw them out into vigorous and accurate exercise; it lays open the operations of the mature mind, and exhibits the means of detecting sophistry and confirming truth. In short, it is a mirror of the reason, in which we may see and make acquaintance with the processes of our minds. The book also presents, in a condensed and agreeable form, the advantages of a thorough study of the exact sciences, the best mode of teaching them, and many useful hints to teachers. But the best and fullest lessons which it furnishes to those engaged in instruction, are presented by the knowledge which it gives of the mind, and of the operations of the mind, of the learner. It makes the teacher acquainted with the intellect which he is to instruct.

Professor Davies has already rendered his state and country a most valuable service by supplying it with the best and fullest course of mathematical instruction extant. Should he continue to devote his ripe scholarship and mature intellect to the perfection of his system of mathematics, as it is earnestly hoped he will, he will not only add to his present distinction, but acquire an enduring fame and leave a rich legacy to his country.

A FRIEND TO EDUCATION.

No. XXXVIII.—VOL. 1, p. 287.

*Constitutional Law.*

## COURT OF APPEALS—THE AUDITOR MANDAMUS CASE.

*The People ex rel. Erastus R. Phelps, Defendants in Error, vs. George W. Newell, Auditor, &c., Plaintiff in Error.*

Mr. Foot.—I join in the sentiments of the learned counsel who has just closed his arguments against the constitutionality of the law in question, of respect for the constitution of the state; and I approve of the extracts which he has read from Vattel showing the importance of sustaining constitutional provisions. I had designed to commence my own observations by showing the importance of our own constitution, and of carrying its requisitions into effect according to their spirit. Judge Brown, of the second judicial district, has written an elaborate and able opinion on the question before the court. He has presented everything which human ingenuity could devise against the constitutionality of the canal law, and decided that it is unconstitutional.

I shall have occasion, in the course of my argument, frequently to advert to his opinion, and show the unsoundness of his positions. In some of his sentiments I concur, especially those of respect for constitutional government.

He says: "Those who recognize and reverence the sovereign authority of the people, and their right to all the attributes of self-government, will not dispute their power to prescribe for themselves, in a written constitution of government, the means they would employ, the manner in which, and the time when, they would proceed to accomplish those objects."

He elsewhere speaks of the constitution, and, in examining its provisions, expresses great regard for the instrument, its language, and even its words.

But respect for the altar should not lead to forgetfulness of the expansive, elevating and purifying spirit of the religion in honor of which it is created. A punctilious and reverential deference for the instrument and the words, without regard to

the scope, spirit, and meaning, will lead to narrow and erroneous construction. There is no surer way of bringing disrespect and contempt on the constitution, which the people have made to promote their prosperity and happiness, than by giving it a narrow and unnecessary construction by which the people are cramped and obstructed in their business, their enterprise, and pursuit of happiness, and by which the state is held back in its progress to power, wealth, civilization, and the refined and elevating arts of life. The people expect their constitution to cherish and promote action and progress, not to manacle and subdue them.

Constitutions on paper are mere phantoms, without the love and respect of the people. The practical and received construction of a law or constitution by the people who live under it, or a large majority of them, is worthy of respect, and entitled to consideration by the court. It should not control its decision, but should be seriously considered. This is a well-settled rule of law. In looking at the application of this principle, we must all be regarded as one people. Our divisions, political or social, our different views of policy, and our party strifes, must be overlooked and disregarded. The history of the state and of its legislation is a subject of judicial cognizance, and may be adverted to as being within the knowledge of the court.

The expression of public and official opinion in favor of the constitutionality of the canal law, is strong and imposing.

1st. The Legislature, at its regular session in 1851, had the passage of this law under consideration, and its expediency and constitutionality were fully discussed in both houses. The assembly passed it by a large majority. There was also a respectable majority for it in the senate. To prevent its passage, however, thirteen senators, who deemed the law unconstitutional, resigned, and the session of the Legislature closed.

The thirteen resigning senators appealed to the people, by a new election, to sustain them in their opposition to the law. Seven of them were not returned, and in their places others were elected in favor of the law. This was a marked expression of the public judgment.

The Legislature assembled again in the summer following, in special session. The law was then passed, and received the vote of a large majority in both houses.



2d. The Executive of the state approved the law, and signed it.

3d. Messrs. John C. Spencer and Samuel Stevens, of Albany, and Daniel Lord, of New York, three eminent and distinguished lawyers of our state, gave opinions, at the instance of the committee of the Legislature, that the law was constitutional.

4th. The committee of the senate on canals made an able and well-reasoned report in favor of the constitutionality of the law on the 14th of April.

5th. The Hon. Daniel Webster, a pre-eminent expounder of constitutional law, gave an opinion in favor of the constitutionality of the law; his opinion on that question having been asked by the committee of the senate.

6th. After the law was passed it was submitted to Judge Bronson, and his opinion on its constitutionality was requested. That opinion is an able one, and fully in favor of the validity of the law.

7th. The officers of our state departments recognized, acted upon, and carried the law into execution. A million and a half of money has been paid into the state treasury, and nine millions are involved in contracts for completing the canal made in pursuance of its provisions.

8th. The Legislature of the present year has, by a vote of a large majority in each house, passed a law recognizing the constitutionality of the canal law, and directed the present state officers to carry it into execution. The opinions and action of the Executive departments of the Government, upon and under the law, by carrying it into execution, are important, and entitled to respect and consideration from the court. Several decisions of the Supreme Court of the United States speak of the action of the Executive departments, as worthy of high consideration on the question of the constitutionality of a law, which they have carried into execution.

Too many have, and still do, loudly proclaim that this court will inquire who were the members of the Legislature that have given their sanction to this law? What gentleman filled the Executive chair? and who occupied the Executive departments of the state in 1851? But *I know* that this tribunal will institute no such inquiry. That they will only inquire what has been the

action of the Legislature, of the Chief Magistrate of the state, and of the Executive departments of our state, in respect to the law in question, and will then consider what is the duty of the judiciary.

Had the law as passed by the assembly at the regular session and under consideration in the senate last year, when the question of its constitutionality assumed a serious aspect, and a highly respectable, intelligent, and patriotic portion of our citizens adopted the opinion that it was unconstitutional, contained a provision which the law now does, and which was added at the extra session, the question now under discussion would probably never have arisen. The provision added at the extra session is as follows: "The certificate to be issued under this act shall in no event or contingency be so construed as to create any debt or liability against the state, or the people thereof, within the meaning of section twelve, article seven, of the constitution."

The consequence of giving a particular construction to a statute, or a clause of the constitution, not only may, but ought to be considered by the court. Though not controlling, they are entitled to grave consideration. One million and a half of dollars have been raised under the law, and in part expended. The certificates are in the hands of *bona fide* holders. Widows, orphans, the aged and infirm, have invested their funds, and doubtless in many cases their all, in these certificates. They are the basis of a large share of our circulating medium, and a very large portion of which must be worthless if they are declared invalid, and carry loss and distress through the community.

The certificates have circulated not only through this state and country, but throughout the commercial world. An adjudication that they are invalid will seriously injure the pecuniary credit of the state, and impair confidence in our form of government. Plain men, who know anything about the matter, and who have invested their money on the faith of the law, will be astonished to hear that it has been adjudged invalid. They will say that the constitution set apart and dedicated the surplus revenues of the canals to their completion, and that the law carries into effect this dedication, and they never will be able to comprehend why it should be declared unconstitutional. Foreigners who know little of our institutions, and who have in-

vested their money in the certificates, and lost it by their being adjudged worthless, will say, "These New Yorkers, who talk so largely of their city, their steamers, canals, and railroads, passed a law by which they have drawn into their treasury millions of money, on the credit of the surplus revenues of their canals, got into a political contest about the law, one party claiming it to be valid and the other that it was void, and the party opposing it have carried everything before it, courts and all, and we have lost our money;" and some of them will doubtless tear up their certificates, throw them into the fire, and declare with an oath that they never will have anything more to do with these cheating Yankees.

The finances will be thrown into great confusion; for if the Legislature had not authority to raise this money, where will they find it to raise the funds to repay it.

The contracts will be rescinded by the act of the state, and immense damages will ensue, which are payable under existing laws. The delay, and consequent loss to the state, in completing the canals, will be beyond calculation.

The consequences are frightful; and no good citizen can contemplate them without a blush of shame and a sinking of the heart. No matter who is in fault, the delinquents are a part of our own household, and we must together suffer for their acts.

FIRST POINT.—A law ought not to be judged unconstitutional unless it is manifestly and unequivocally in conflict with the constitution. (*Morris vs. The People*, 3 Denio, 381. Opinion of Senator Lott, and cases cited by him, p. 394.)

The doctrine is well expressed by Senator Lott as follows:

"The presumption is always in favor of the validity of a law if the contrary is not clearly demonstrated. Chief Justice Marshall, in *Fletcher v. Peck* (6 Cranch, 87), says: 'It is not on slight implication and vague conjecture that the Legislature is to be pronounced to have transcended its powers, and its acts to be considered void. The opposition between the constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other.' And Chief Justice Savage, in *Ex Parte Colburn* (1 Cowen, 564), says: 'Before the court will deem it their duty to declare an act of the Legislature unconstitutional, a case must be presented in which there can be no rational doubt.'"

The learned counsel on the other side has stated that the principles applicable to statutes are also applicable to the question under consideration. This I deny. Remedial statutes have one set of rules for their construction, penal statutes another; and statutes in general still another. But there is only one rule for the construction of a clause in the constitution, and that is the one stated in the point and supported by the authorities referred to.

SECOND POINT.—The surplus revenues of the canals were set apart and dedicated by the constitution to their completion; and the *manner* in which those revenues were to be applied to that object was given unrestrictedly to the Legislature, but the *time* was designated. They were to be applied “*in each fiscal year.*” (Const., art. 7, sec. 3.)

*Note 1.*—The Legislature, therefore, had power to adopt any conceivable manner of applying the revenues to the object designated; and no one is more obvious, or common, in like cases, than anticipation of the proceeds on the credit of the fund.

*Note 2.*—The object of designating the time of application, viz., *each fiscal year*, was not to secure the expenditure, and the constitution does not require the expenditure, during each fiscal year, of the surplus which arises in that year; but the object was, and the constitution does require, the application of the *actual*, and not an estimated or speculative surplus. The convention intended to confine, and the constitution does confine, the Legislature to an application of no greater sum than the surplus actually amounts to. The policy, spirit, and object of this requirement are the same as those of the requirement of annual appropriations.

The discussion, written and oral, of the question under consideration, has occupied too narrow grounds, has partaken too much of philological disquisitions, have sought more for the letter than the spirit of the constitutional provision under examination. Our judicial oracle of constitutional law, our immortal Marshall, has set us a different example. Let us look for the scheme, policy, and leading object of this third section of article seven of our constitution. It is in the following words:

“After paying the said expenses of superintendence and repairs of the canals, and the sums appropriated by the first and

second sections of this article, there shall be paid out of the surplus revenues of the canals to the treasury of the state, on or before the thirtieth day of September in each year, for the use and benefit of the general fund, such sum, not exceeding two hundred thousand dollars, as may be required to defray the necessary expenses of the state; and the remainder of the revenues of the said canals shall, in each fiscal year, be applied, in such manner as the Legislature shall direct, to the completion of the Erie canal enlargement and the Genesee Valley and Black River canals, until the said canals shall be completed."

The *scheme* was that the canals should complete themselves; the *policy*, to apply the *actual* surplus, and to secure that, annual application was enjoined; and the *object*, the prosperity of the state. The leading thought, the great motive of this third section, was, that the canals should complete themselves, without any additional burden upon the state. The *manner* of executing the scheme, and accomplishing this great end, was not an essential, and the people, in convention, left it entirely to the Legislature. The Legislature, as said in the note to this second point, have taken the obvious, and, in like cases, the common course, to effect the end. The convention did not intend or attempt to legislate, but the most able of those who would declare the law unconstitutional are obliged to make the convention legislate to reach their conclusion, and to that end assume that the constitution contains a provision which it does not.

Judge Brown, in his elaborate opinion, says: "But the infraction of the constitution is that they (surplus revenues) shall be applied and *expended* in each fiscal year;" "and the first three sections (of article 7th of the constitution) were doubtless an adjustment of several interests, and they will not be executed in their true spirit and meaning, unless the remainders are applied yearly, and in each fiscal year, in the *work* of completion."

*Does yearly application prevent anticipation?*

Does it *manifestly* and *unequivocally*, so that there is a direct conflict between the law and the constitution?

The surplus cannot be applied in any form in each fiscal year, according to the very letter of the 3d section, as is claimed by Judge Brown, in his opinion, and the counsel opposed; for the surplus must first be ascertained and then appropriated. There



always has been, and must be, anticipation of this revenue; for *binding* contracts with contractors, running generally for three years and some of them for six, in anticipation and in contemplation of this revenue, have been constantly made since the adoption of the constitution.

These contracts are authorized by law, and are actually state debts, for they contain engagements of the state to pay. I only refer to this to show the folly of splitting hairs and criticising words and phrases in expounding the constitution.

Our learned opponent has stated the various modes adopted in England in former years for raising money. One was by annuities, another by loans in anticipation of taxes levied or to be levied; and he contends that if anticipations on specific funds can be allowed, then our Legislature may lay a tax on real estate for fifty years, and issue certificates on its credit, and thus nullify the constitution and render it ridiculous.

There are two answers to this argument:—*First*. His hypothesis is extravagant, and any principle, however wholesome, can be reasoned down in the same way. It is puerile logic.

*Second*. The constitution dedicates the fund in question to the specific object, and hence the Legislature, in respect to it, can adopt no such extravagant and unreasonable measure as the one stated in my learned opponent's hypothesis.

To show that the measure adopted by the canal law might be safely, and under some circumstances, applied to the first section of the seventh article of the constitution, which sets apart annually, out of the canal revenues, \$1,300,000 for the payment of the canal debt, let us suppose a state of things in the country to be such that, by raising the amount of the canal debt on the credit of this annual appropriation, a large saving, say of several millions, to the state might be made, would it not be both wise and constitutional to anticipate this annual appropriation, and extinguish the canal debt in the same way that the law in question anticipates the surplus revenues of the canal to effect their completion? We must keep constantly before us the fact that the constitution has set apart and dedicated this surplus to the completion of the canals. No one can say that the law does not apply the fund according to the constitutional dedication.

The next objection is, that the revenues are to be applied

yearly *until* the canals are completed, while the law applies it yearly until the nine millions are paid.

ANSWER.—There is no constitutional restriction on the power of the Legislature over these revenues, after the canals are completed.

The next objection is, that the law interferes with and restrains the right of the Legislature to apply, annually, \$672,500 to defray the expenses of the state, after either the general fund debt is paid or the canals completed.

ANSWER.—The general fund debt may be paid as soon as the canals are completed. There is no evidence before the court that it will not. But the decisive answer is, that the constitutional provision is merely permissive. Its language is:

“And after that debt [the general fund debt] shall be paid, or the said canals shall be completed, then the sum of six hundred and seventy-two thousand five hundred dollars, or so much thereof as shall be necessary, *may* be annually appropriated to pay the expenses of the government.”

TRUE EXPOSITION OF THE CONSTITUTIONAL REQUIREMENT TO  
MAKE THE APPLICATION OF THE SURPLUS REVENUES OF THE  
CANALS IN EACH FISCAL YEAR.

My position is the one stated above in the note to my second point. The position on the other side is, that this requirement was designed to delay the completion of the canals until it was effected by a yearly expenditure of the surplus.

I am not surprised at such a proposition from Judge Brown, after reading his opinion in respect to the effect on some portions of the state by completing the canals. He says: “But in the completion of the unfinished canals there were large portions of the people who had no manner of interest, and in the appropriation for that purpose they took no benefit.” If the people of Orange county, where his honor, Judge Brown, resides, were called upon to pay, by direct taxation, their proportion of the expenses of administering the government of the state, I apprehend that both the judge and his neighbors would find out that they had some interest in, and took some benefit from, the completion of the canals. But I am surprised to hear my learned opponent, who resides on the line of the canal, advance such a proposition.

Certainly it is a new idea, that the convention intended to keep back the completion of the canals. As already said, the controlling design was that they should complete themselves and cast on the state no additional burdens. To accomplish that, the requirement was introduced on the principle stated in the note.

I confidently leave these two views of the true meaning of the clause of the constitution now under consideration, before the court, for their adoption of the one or the other.

THIRD POINT.—The trust, duty, obligation, or whatever else it may be called, which the state assumed, or which was conferred upon it by the act passed the 10th July, 1851, for the completion of the canals, was not a debt within the meaning of the 12th section of the 7th article of the constitution.

The term *debt* has many meanings. My learned opponent has favored the court with several. He says, "some return or compensation therefor is the true definition of a state debt." That "an agreement to pay interest until the principal is returned is a state debt." That "governmental expense above revenue, unsatisfied, is a public debt." That "anything due under any form of obligation is a debt in the popular sense." That "a right to a sum of money on any form of contract is a debt."

It appears to me that it is pretty difficult to tell from these various definitions what my learned opponent's precise idea is of a debt. I will add another more general example of the meaning of the term: "Forgive us our debts as we forgive our debtors."

The constitution will help us to the true definition of the term used in the 12th section of the 7th article, which prohibits the contracting of public debts. That definition will clearly appear from the three following sections:

"SECTION 10. The state may, to meet canal deficits or failures in revenues, or for expenses not provided for, contract debts; but such debts, direct and contingent, singly or in the aggregate, shall not at any time exceed one million of dollars, and the moneys arising from the loans creating such debts, shall be applied to the purpose for which they were obtained, or to repay the debt so contracted, and to no other purposes whatever.

"SECTION 11. In addition to the above limited power to con-

tract debts, the state may contract debts to repel invasion, suppress insurrection, or defend the state in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

“SECTION 12. Except the debts specified in the tenth and eleventh sections of this article, no debt shall be hereafter contracted by or on behalf of this state, unless such debt shall be authorized by a law for some single work or object to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax to pay, and sufficient to pay, the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within eighteen years from the time of the contracting thereof.”

The meaning is obvious. A state debt is an obligation to repay money borrowed on the credit of the state. The history of the finance of the state and of the constitution also shows this. A debt, as used in the 12th section, is nothing more or less than what I have stated.

The money obtained under the canal law, now in question, is borrowed on the credit of a fund consisting of the surplus revenues. The engagement of the state is to collect and receive the fund and pay it over to the lender, and to remove all doubt, declaring at the time of entering into the engagement and inserting the declaration in the within contract, that it assumes no other obligation or liability. The state assumes the office and duties of a trustee. The transaction lacks three essential ingredients of a state debt.

1. The money is not borrowed on the credit of the state, and the state does not become a debtor.

2. The state does not assume the obligation of debtor.

3. The holder of the certificate has no right to demand payment of the state.

If the question should be asked me if the fund on which the money is borrowed under the law in controversy should fail, whether I would vote for a tax to raise the necessary funds to repay it, I would say yes! So if I had borrowed money on usury, and which I would be under no legal obligation to pay, I would repay it with lawful interest. So if the funds of a meritorious

charity should fail, I would contribute to supply them. So if a man lent me money on a mere mortgage security, and the mortgage property should prove insufficient to repay the whole of it, I would repay the difference. So if a mechanic should build me a house, and by miscalculation agree to, and actually construct it for, a sum less than it was worth, I would pay him what it was actually worth to me. Not, however, because I was under any legal obligation, but because my sense of duty would lead me to do so. Not through coercion, but entirely from voluntary choice.

On this same view of duty, and irrespective of obligation in any form, this state has often made allowances to contractors, who have found after they have commenced their work some obstacle, not known or contemplated when the contract was made, and which renders their contract oppressive on them.

Some light may be gathered from the principle of law respecting moral obligations. They can never be enforced, nor are they even a sufficient consideration for an expressed promise. Hence a promise to pay a sum of money or perform an act, founded on the consideration of a moral obligation, is void. This is the settled doctrine of law, as will appear by the following cases:—*Nash vs. Russell* (5 Barb. S. C. Rep. 556); *Geer vs. Acker* (2 Ibid, 420); *Watkins vs. Halstead* (2 Sandford S. C. Rep. 311, and cases cited there).

There is no difference between the debt of a state and an individual, except in the remedy. One is enforced by suit and the other by petition. If there is any difference between the two kinds of debt, that of the state has the higher sanction; for there is included in the idea of a state debt, not only a promise to pay, but a pledge of the public faith that the promise shall be performed.

My opponent has alluded to the debts, “direct and contingent,” mentioned in the 10th section, and has suggested, though not distinctly contended, that the moneys borrowed under the canal law created a contingent liability on the part of the state to repay them. This is an error. The contingent debts alluded to in the 10th section are those for which the state is liable where loans have been made to railroad companies on the credit of the state, and which the state is bound to pay on the contingency that the companies do not.



To show what loose notions of a debt must be adopted to reach the conclusion that the law in question creates a state debt, I will quote a sentence or two from Judge Brown's opinion. He says :

"If a state may obtain an advance of moneys, to be repaid, with the interest, from a part of its resources, and not create or incur a debt, I see no reason why it may not, by the same means, evade the creation of a debt when all its resources are to be given over to those advancing the money for its repayment. Whether the obligation to repay is general or special, whether the contract is to pay from one or from all the resources at its command, it cannot be regarded otherwise than one that imposes a duty and creates a debt."

Again :

"To constitute a debt there must be a contract, either express or implied, but it is not indispensable that the liability created by the contract should extend so far as to subject the person of the debtor, or all his property, to be seized upon the final process of the courts, issued to coerce its payment and satisfaction."

Where money is borrowed on the credit of a fund, without any obligation of the borrower to repay it, or on the credit of a mortgage which is given to secure its repayment without any bond accompanying it, and in like cases, there is a debt in a certain sense ; and so it may be said, if the counsel choose, in respect to the money borrowed and advanced on the credit of this fund ; but it is not a debt which the state has promised to pay. There will be no breach of the public faith if the fund should prove inadequate. The state might, and probably would, pay the money if the fund should fail. But it would be wholly at her option.

Had this fund been dedicated by the constitution to the very object to which this law applies it, although the law would not then have been a *manifest and unequivocal* violation of the constitution, it would have so far interfered with its scheme as to be justly subject to censure. But as it now only carries out the avowed object of the constitution, it is loyal to the constitution and meritorious.

Some of the eminent lawyers who have examined this subject,

have considered the certificates, in effect, as transfers of interests in this accruing fund, and that the state merely engages to recognize them. There is no doubt great force in this view of the subject. But the transaction appears to me to be a borrowing of money on the credit of this fund ; or in other words, anticipating it. And so I have viewed and discussed it, as the court has perceived.

The great effort of the counsel opposed, and of those who hold the law unconstitutional, including Judge Brown, is to show that the state has engaged to do more than perform the duties of a trustee ; that it has guaranteed the sufficiency of the fund. If there can be found a *manifest and unequivocal* guaranty in the certificates or the law, or in both, or even any guaranty of the sufficiency of the fund, then indeed I have examined them in vain.

I will notice one more curious test to show that the transaction under the law is a debt. That is presented by Judge Brown ; and it is the fact, that the certificates bear interest payable semi-annually until the principal is paid. The Judge argues with great earnestness and fullness, that because interest is payable the principal must be a state debt. It seems never to have occurred to him that there are the same engagements exactly in respect to the principal that there are in regard to the interest. And if the interest proves that the principal is a debt, the principal equally proves that the interest is. In that way his honor, Judge Brown, would prove both to be debts, and the law unconstitutional.

FOURTH POINT.—Anticipating the revenues of the canals in any form, and pledging them for the return of such anticipations, is not a sale, lease, or other disposition of the canals in violation of section 6, article 7, of the constitution.

*Note.*—There was the same provision substantially in the old constitution. (Art. 7, sec. 10, at the end.)

The 6th section of the 7th article of the constitution is as follows :

“The Legislature shall not sell, lease, or otherwise dispose of any of the canals of the state ; but they shall remain the property of the state, and under its management forever.”

The meaning and object of this section is clearly to retain in

the state the management of the canals. The law does not interfere with this in the least. It even leaves the tolls entirely under the management of the state. The eleventh section of the law is as follows :

“The canal board shall, from year to year, until otherwise directed by act of the Legislature, adjust the rates of tolls on all articles transported on the canals of this state, in such manner as in their judgment will produce the greatest amount of trade and revenue.”

My learned opponent has contended, though not with earnestness, that the law is unconstitutional for violating the 8th section of the 7th article of the constitution, which forbids the payment of any public money “except in pursuance of an appropriation by law.” The law does contain the requisite appropriations in sections 8 and 9. The difference between an application of the surplus revenues to the completion of the canals and an appropriation of money in the treasury is too plain to require illustration or argument; and I shall not trouble the court with any observations on the subject.

I have now discharged my duty in this interesting and important case. I feel that I have done it imperfectly, and have fallen far below what the occasion demands. But I entertain a strong conviction of the constitutionality of the law, and am deeply impressed with the importance of sustaining it, both as respects the interests and the financial and legislative character of the state; and I hope my expectations as to the result will be realized.—*Albany Evening Journal*, Wednesday, April 14, 1852.

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No. XXXIX.—VOL. 1, p. 287.

*Memory of Henry Clay.*

In the Court of Appeals yesterday afternoon, the Hon. SAMUEL A. FOOT addressed the court as follows:

May it please the Court: The members of the bar of this state, in attendance upon this court, desire to manifest, in some suit-

able manner, their grief at the death of their distinguished fellow-citizen and professional brother, Henry Clay ; and feeling assured that the judges of the court entertain the same sentiments, they have requested me to bring the melancholy event to the attention of the court.

While we mourn the departure of this great man, full of years and honors, we can not but be grateful to a kind Providence for having spared his life so long, and permitted him to devote it to the service of his country and the world. His mind was of so high an order, his oratory so captivating and powerful, his views so comprehensive and humane, that not only our own but other countries have felt and enjoyed their benign influence. His name is identified with the progress of constitutional and representative government during the present century ; and when the history of nations struggling for constitutional liberty shall be written, his efforts in the noble cause will adorn its pages and form some of its most brilliant paragraphs.

A review of the struggles and efforts of his early life, in connection with his subsequent successful career, presents an animating and encouraging prospect to American youth, endears our institutions to us, and shows the world that regulated freedom is the best earthly gift man can have, and forms the only atmosphere in which he can breathe freely, and the only food and culture to develop in full measure the faculties of his mind and body.

We shall not again hear the voice or counsel of this peerless statesman or enjoy the society of this warm-hearted friend ; but let us not forget his counsel, nor fail to cherish a deep remembrance and warm admiration of his talents and virtues.

As a token of respect to the memory of this eminent patriot and lawyer, I move that the court now adjourn.

Chief Justice RUGGLES said: The judges of the Court of Appeals, in common with the members of the bar, are deeply impressed with the great loss which the country has sustained in the death of the distinguished citizen whose decease has just been announced. They are desirous of uniting in any and every testimony of respect to his memory. They concur in that which is now proposed, and direct the court to be adjourned accordingly.

No. XL.—VOL. 1, p. 288.

*Agriculture.**Address before the Agricultural Society of the Town of Seneca.*

NEIGHBORS AND FRIENDS: To look through nature up to nature's God, purifies and exalts, also subdues and humbles the spirit of man. When we contemplate the firmament, and dwell upon the fact that this earth on which we live and die lies suspended in boundless space, has two rapid and unceasing motions, one which rolls it entirely round each day, and the other which carries it around the sun each year, we wonder, and the mind inquires, how can this be? But when we extend our range of thought, dwell on the amazing fact that there lies suspended in like manner, in this unlimited space, many worlds, more even than man can number, and all moving in their orbits with great velocity, we are filled with awe, and the soul pauses and adores the infinite Creator. Withdrawing from this overwhelming view of His mighty works, and returning to the planet on which we are placed, we see that by a simple arrangement, consisting in merely raising the northern end or pole of the earth a short distance, our kind and heavenly Father establishes the seasons, and with them gives us seed-time and harvest, and enables us to sow and reap, plant and gather the products and fruits of the earth. He thereby also clothes the earth with the beauty of spring, the luxuriance of summer, and the soothing, sombre richness of autumn; and all for the comfort and happiness of man, the chief work of His hand.

When the wonderful works of creation are contemplated, who is so earthly as not to realize and enjoy their elevating and purifying influence? And when the full and perfect provision for the wants of man are viewed in connection with his deserts, who is so insensible as not to feel subdued and humble? Certainly not the thoughtful cultivator of the earth, whether he labors on his farm and sows his fields, or plants his garden and adorns his grounds.

Born and reared upon a farm, though following through life



a different pursuit, I still love the farm and the garden with the freshness and ardor of a first love; and one of my highest sources of enjoyment is to take a part in their cultivation. Yet I do not consider myself sufficiently an adept in agriculture or horticulture to attempt to instruct you in the management of your farms and gardens. I can, however, sympathize and enjoy with you the pleasure of your vocation, realize its true dignity, and speak to you *of what a genuine farmer and gardener is and ought to be*. Before I do that I will venture to mention two or three things which may be of advantage to some of you, or to some of your neighbors.

While riding through the country in this vicinity, I have observed with deep regret the little care which in too many instances is taken of farming utensils. Harrows and ploughs are left in the field where last used, and in some instances permitted to lie there through the winter; sleighs are left with the iron shoes in the mud from the end of one winter to the beginning of another, for the shoes to rust and the woodwork to crack and decay by the alternate operation of rain and sunshine; wagons and carts are left in the highway unhoused, to be injured in the same way. Besides giving to the farm, where this neglect is practised, a shiftless appearance, the farmer himself suffers an actual loss of no small amount. His implement breaks when he most wants its use, and he is obliged to suspend his work to repair it; and every few years he is compelled to incur the expense of purchasing new ones, when, with proper care, the old ones would last for many years. A thrifty and successful farmer will always have a safe and suitable place for his utensils, and put them there when he has done using them, so that they may be ready and in good order when he wants them again.

One other thing I have also observed with equal regret, and that is, the great waste of manure and the little attention paid to making it. When the land in this region was new, it did not require the aid of artificial fertilizing agents, nor for many years afterwards, the soil being strong and rich. But we have now reached a period when Western New York, the admitted garden of America, needs aid from manure. She has poured out her productions in rich profusion for many years, but exhausted nature must now have rest or aid. We cannot afford to give her

rest, and we must, therefore, give her aid. The way to do it is already known, or may be easily learned by all. Manure your lands, and, as if grateful for the favor, they will give you rich returns.

One thing more I will mention, not with regret but pleasure. It seems now to be universally conceded, that the Osage orange makes the most beautiful, effective, and enduring hedge of any shrub hitherto discovered. As it is a native of latitudes more southern than ours, many discussions have been had and experiments made to ascertain in what localities it will flourish without protecting aid in the winter. I am happy to inform you that an experiment of my own shows that it flourishes with us without such aid. I will also add that a like experiment made this season shows that our clayey soil will produce good sweet potatoes.

Now, with your leave, I will speak of what is, and should be, the qualities of a genuine farmer and gardener.

In the first place, he should be a gentleman. I do not mean that he should be clothed in purple and fine linen, or that his manners should be formed on the model of Beau Brummel, or that he should study and practice the punctilios of life according to the teaching of Count D'Orsay; but I mean that he should have a clear head and a good heart, a sound judgment and warm affections. And these he may well have, and I am happy to be able to say that the owners and cultivators of American soil in general do have them, though their hands are thick and hard, their arms sinewy, their shoulders broad, and their chests expanded by reason of their manly and vigorous occupation.

All admit that the most reliable portion of our population to uphold our institutions and sustain the great interests of our country, are our farmers. Why are they so? The answer is obvious: the tendency of their occupation is favorable to purity of life, and to calmness and thoughtfulness of mind. The earth is emphatically their mother, and she is daily and even hourly teaching them lessons of wisdom and virtue. But let them not suppose that her instructions are sufficient of themselves, and that all they have to do is to be passive recipients of the knowledge she communicates. Besides the lessons which nature profusely gives, the tiller of the earth, if he would draw forth her

richest treasures, enjoy her choicest gifts, and maintain the respectability of his occupation, must read, study, and investigate. What character is more estimable, what position in society more desirable, than an educated cultivator of the soil? And when we look upon the companion of his life, the sharer of his toils and joys, and find her a lover of nature, a cultivator of flowers, we greet her with admiration and respect. In passing through the country, if we see a flower-garden near a house, be it ever so small, or even a single flower well cared for, we may safely conclude that there are neatness, order, and happiness within its doors. And when walking along the streets of a village, we see a court-yard laid out with taste and adorned with choice flowers, we say, there is a sweet spot, that must be a happy home; and almost always we may add,

“There woman reigns—the mother, daughter, wife,  
Strews with fresh flowers the narrow way of life.”

The tilling of the earth, the consequent converse with nature, the study of her productions, the culture of plants, and especially of flowers, all have a powerful influence in softening and purifying the heart, all elevate and strengthen the affections, all encourage and bring into active exercise the amenities of life; they also forbid all coarseness of action and feeling, they repel all offensive trifling; in a word, they make gentlemen and gentlewomen.

Secondly. Farmers and gardeners ought to be, above all other men, and in many instances are, bright Christians. Do not be startled, my friends, with the idea that you are on this occasion to have a discourse like those from the pulpit on the Sabbath. You will only have an imperfect and brief description of the man who loves the earth because God made it, who enjoys its rich and beautiful productions because his heavenly Father bestows them, and who daily returns thanks for the abundant rewards which a bountiful Providence gives to his labor.

The cultivator of the earth, whose soul is renewed in the image of his Maker, and whose peace is made with Heaven, after a night of calm and refreshing sleep, wakes at early dawn, and, grateful for his undisturbed repose, breathes a brief but fervent prayer to the ever-wakeful Watchman who hath kept him and

his in safety through the night. He rises with composed and cheerful mien, walks out and meets and greets the morning sun, which his kind Father hath set in the heavens to give him light by day; he commences his daily duties with his thoughts composed and his feelings full of kindness to all; he omits not either before or after his morning meal, and before commencing the main labor of the day, to call his family together and offer a morning sacrifice of thanksgiving, prayer, and praise to the Ruler and Governor of the earth, and invoke a blessing on his labor. Thus prepared, he enters upon the work of the day with a strong arm and buoyant spirit. He works with a will, and those in his service, if such there are, catch his spirit, and labor cheerfully and freely. The part of the curse for man's disobedience—"In the sweat of thy face shalt thou eat bread"—becomes to him a blessing. He regards it as just that the earth should yield its increase only to those who labor for it. "He delights in the law of the Lord," and rejoices that he can fulfil it by earning his bread in the sweat of his face. Guided by such a feeling, and animated by the assured favor of the Giver of every good and perfect gift, his toil is no burden, and his day passes happily. The setting sun calls him from his work, and, his duties done, he enters his dwelling with the subdued and solemn feelings which expiring day always awake in a heart set on heaven. Those feelings are well expressed in the following lines:

"When the last sunshine of expiring day,  
In summer's twilight weeps itself away,  
Who hath not felt the softness of the hour  
Sink on his heart as dew along the flower?  
With a pure feeling which absorbs and awes,  
While nature makes that melancholy pause."

Having partaken of his evening meal, this laborious but heavenly-minded husbandman again calls his household around the family altar, and having read a portion of the oracles of truth, which are the guide of his life, he kneels to "heaven's eternal King and prays." Sweet and refreshing sleep follows a day thus spent. Nor need I say that a life so spent is not only rewarded with the richest and best treasures the earth can give, but with those heavenly treasures which moth and rust doth not corrupt.

Does any one of my hearers say this is mere fancy, and not a picture of real life, and unattainable. Let me answer that he is mistaken. There are many such in this our highly-favored country, and would there were more. Let us, my neighbors and friends, endeavor to show that there are at least some such.

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No. XLI.—VOL. 1, p. 291.

*Taxation of Towns for Building Railroads.*

*To the Honorable the Legislature of the State of New York, in Senate and Assembly convened.*

The undersigned, taxable inhabitants of the village of Geneva, in the county of Ontario, respectfully represent, that there is a project in agitation for building a railroad from Ithaca to the northerly part of the village of Geneva.

The enterprise is generally regarded of such doubtful expediency and utility that capitalists at a distance will not subscribe to the stock, and persons of intelligence and property along the line and in the vicinity of the road are unwilling to subscribe for it in sufficient quantities to accomplish the object. Under these circumstances a portion of the inhabitants of our village have resolved to compel your memorialists, through the instrumentality of a law of the Legislature, to contribute, contrary to their wishes and convictions of duty, a large sum of money towards constructing the road; and thus, in effect, force them to subscribe for and encumber their property to secure the payment of the stock. While many of the undersigned, in deference to the wishes of their neighbors, and in the hope that the road may be of some advantage to the village, are willing to take a reasonable amount of the stock, yet they protest against and will resist in every legal and constitutional way in their power, the attempt which is now being made to compel them to part with and vest their property, contrary to their will and judgment.

The great central line of railway from Buffalo to New York now passes through the village; and by two ways, one a line of



steamers on Seneca lake, and the other a ride of about six miles on a plank road, the village is directly connected with our great southern railway, leading from Dunkirk and Buffalo to New York. In addition to these accommodations, the Cayuga and Seneca canal connects our village with the great Erie canal, and gives it also a commodious water communication with Ithaca.

The unreasonableness, therefore, irrespective of all other considerations, of obliging your memorialists to build another railroad to connect the village with the New York and Erie railroad, and to open another connection with Ithaca, is most obvious.

The mere starting of the project shows to what an extravagant extent the present railway mania prevails. Certain and heavy losses must ensue. The village of Geneva is a retired and beautiful place, where many families of moderate fortunes have settled to enjoy comparative quiet, and improve the advantages which it affords for the education of their children. It has a literary and medical college, each conducted by able faculties, and several excellent male and female schools.

Its present means of communication with the rest of the state and country are already ample for its wants. To subject the real property of the village to a mortgage of fifty or one hundred thousand dollars, as the proposed act of the Legislature would, will deter families from selecting it as a place of residence; they will go in preference where the sanctity of private property is more justly appreciated and better protected.

Your memorialists further respectfully represent, that your honorable body have not a constitutional right to enact the proposed law. They are aware that several such laws have been passed, and heavy incumbrances laid by them on the property of several cities and villages in this state; but they have generally been passed without serious opposition, under the impression that their operation would be beneficial to the given city or village. The time is yet to come when their constitutionality will be tested. That time will be when the present inflated and unnatural state of our trade and currency finds an end in commercial revulsion, which will as certainly come in the course of a very few years, as that the inflation now exists.

Then railroad stock will find its actual level, and probably fall below it, and then those railway companies whose roads are not favorably located will not be able to meet their engagements, their property will be sold, and the villages called upon to pay the incumbrances upon them. The tax-payers, finding that they are called upon to pay for a phantom, will then inquire by what right the call is made; and then the constitutionality of these laws will be settled at great expense, amid contention and distress. The history of the bonds which a majority of the voters of the town of Bridgeport, in the state of Connecticut, determined to give to aid the construction of the Housatonic railroad, will become the history of our encumbered cities and villages, and, among others, of our own beautiful and happy village of Geneva—but, we believe, with a different result. That instead of the household furniture of those of us who may not be able to pay our proportion of the mortgage being sold at auction, as was done at Bridgeport by the sheriff, the law will be adjudged unconstitutional, and the mortgage void, and the honest creditor deprived of his debts; and your memorialists hope they may not be placed in a position where, to protect themselves, they may cause such a loss to others.

Our constitution permits the Legislature to take private property for public use, on full compensation being made, and to lay just and equal taxes for public purposes, but confers no authority to pass a law allowing one man to compel another to encumber or vest his property against his will and judgment. Such a law, your memorialists submit, is in direct violation of the Constitution of the United States prohibiting our legislatures from passing laws impairing the obligation of contracts; vested rights in property being, as the Supreme Court of the United States and our own state courts have often decided, contracts executed, and therefore protected by the provision of the Constitution.

Your memorialists most earnestly and solemnly protest against the passage of a law authorizing the voters of the village of Geneva to encumber or pledge the property of the inhabitants thereof, for the construction of the contemplated or any railroad, and they hope and trust they will not be compelled to resort to

the judiciary of the country to protect them against an act of their own representatives.

GENEVA, *January 17, 1853.*

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No. XLII.—VOL. 1, p. 292.

*Duties of the Educated Men and Women of America.*

The progress of our country is a topic of conversation over the earth, a theme for every pen, and is, indeed, so great, proceeds with such rapidity, and presses forward with such an irresistible and overwhelming force, as not only to arrest the attention, but excite the astonishment of the world. We who are actors in this grand national drama, imbued with the restless and irrepressible spirit which forces onward the action, and presents scene after scene in quick and startling succession, are so absorbed by the performance of our respective parts, that we stop not to reflect on the character of the incidents, the moral inculcated, or the final catastrophe. We are like one of our noble ships, with all her canvas spread before a breeze as strong as she can bear, driven forward with a speed so fast, that thought gives place to excitement, and we neglect to take our observations and make our reckonings. The passengers and crew, unskilled in navigation, confide their safety to the instructed officers, and rely on their better knowledge for a safe and prosperous voyage. So in the ship of state. The mass of the people are occupied in their daily duties and business, and trust to those who have been educated—who have had leisure and means for acquiring higher and greater knowledge—to direct her course and bring her safely into port. Should they cease to be reliable guides, there would be cause for anxiety and alarm.

I propose to pass the present hour by asking my audience, both ladies and gentlemen, to join me in taking a general and very brief survey of the progress of our country during the present century, in territory, population, wealth, power, and development of resources; and then inquiring, in view of this

progress and its probable continuance, what are the duties of our educated men and women, and particularly of those charged by their position and relations in life with training and instructing our youth, male and female?

There are no data by which we can ascertain the number of square miles or acres which have been added to our territory since 1800, for our claims westward, at that period, were somewhat indefinite, and portions of them contested. It is sufficient, however, for the present purpose, to recall the facts, that in 1803 we acquired the vast region of country then known as Louisiana, out of which five states have already been formed, and land enough still remains to form several more; in 1819 we obtained the Floridas; in 1845, Texas, and within the last few years have settled the northern boundary and established our right to Oregon, and obtained California and New Mexico. These additions have more than doubled our territory, and spread us across the continent from ocean to ocean, with a zone of twenty-three degrees of latitude, and an area almost equal to the whole continent of Europe.

Our population in 1800 was a little over 5,000,000. It is now 25,000,000, and consequently has quintupled.

Our wealth has increased in a far greater proportion than our population; but I know of no means of measuring the increase which will give a result even approximating the truth. The same must be said of our power. We know that the number of our able-bodied men is fivefold greater than at the beginning of the century. But there are many other elements of national power beside able-bodied men. Prominent among them are material for military and naval armaments, mechanical force and skill for converting it into efficient means of warfare, national wealth and credit, ability and facilities for rapid transportation of men and military stores. All these elements of power have been vastly augmented during the last fifty years.

The resources of the country, though yet imperfectly developed, have been wonderfully unfolded and brought out since 1800. We had then comparatively no manufactories—now they cover the country. We had then no steam power—see the wonders this agent is now daily performing. We knew not then of the immense beds of coal, which fill our hills and mountains.

A few particulars, however, will give us a more accurate idea of the progress of our country than these generalities.

In 1800, we had 903 post-offices; we have now upwards of 20,000. In that year we had 20,817 miles of post-roads; now we have over 200,000. The postage of that year amounted to \$280,804; this year it will exceed \$7,000,000.

In 1800, the average time of travel between New York and Albany was six days; now the journey is performed in three and a half hours. Then a journey from Albany to Buffalo took from three to five weeks; now it is performed in ten hours. No communication could then be had between those places short of three weeks; now news can be transmitted from one to the other in as many seconds.

This advance is startling; and no thoughtful mind can contemplate it without deep interest, nor without fear and anxiety for the result. Should it continue, as it undoubtedly will, and our nation's desire for extension and aggrandizement remain unabated, as it also undoubtedly will, Cuba and Mexico on the south, and the British provinces on the north, will ere long form parts of these United States, and, before this century closes, become members of our National Union. When this vast hemisphere shall be consolidated under one government—when American blood shall warm, and American spirit animate, the mighty multitude who will then inhabit it, and form one united people—the nations of the earth must succumb to our power, and do our bidding. The thought here comes boldly up, Who, and what, shall we then be? I will not ask on *this* occasion, Shall we be a nation of Christians, and love our neighbors as ourselves? but will ask, Shall we be lovers of peace, forbearing and patient under wrongs? Shall we respect the rights of, and be just towards, other nations, demanding only what is right, and resisting only what is wrong? Or, on the other hand, shall we be haughty, punctilious, aggressive, warlike, demanding things unjust, or of doubtful right, and threatening war in case of non-compliance?

When the educated and enlightened of our country, who give tone to public sentiment—when fathers, mothers, teachers, who mould the thoughtful mind, reflect, and bring the thought home to their bosoms, that on them mainly depend the answers to these questions, they may well inquire what are their duties.



I pass in this connection, and on this occasion, the inquiry which has been made so often and so eloquently and earnestly by the best heads and hearts of our country, What is our duty, as Christians, in giving the Gospel, and all its elevating, sweet, and hallowed influences, to the millions of our kindred and countrymen who are and will be spread over our vast domain? I direct my inquiry to an audience gathered at a seat of learning—to ladies and gentlemen, who, by their presence here, show that they appreciate the benefits of a liberal education—who know that knowledge is power, that it governs the world, and emphatically our own great and growing country.

It may aid us, in ascertaining and defining the duties we are seeking, to look back on the past domestic history of our country, and recall to view the education and training given by American fathers, mothers, and teachers of the last century to the men and women of this century, who have been, and many of whom still are, actors in the great national development daily unfolding before us. The germ of that education and training lay in the piety, love of learning, attachment to regulated liberty, stern independence, inflexible integrity, simplicity, and purity of life of our Puritan fathers; and among them I include those of Dutch and French extraction. This germ sprang up, bloomed, and bore its natural fruit in the last century, and made the American people what they were when they asserted and obtained our national independence. And what were they? We, their children, with warm and grateful hearts, may answer. They were devout, learned, lovers of constitutional liberty, sternly independent, contenders for and practisers of right, simple and unostentatious in their manner of life, affectionate, faithful, and true in their domestic relations and duties—their home, to them, the sweetest, dearest spot on earth. These rare and high qualities of our ancestors fitted them for the crisis through which they passed, and enabled them to meet and overcome all its difficulties. Our Revolution was not, like most others, a sudden and violent ebullition of passion, overthrowing on the instant old institutions and substituting new ones in their place, which again soon disappeared as the excitement ceased, and the nation relapsed into its former courses; but was a change gradually made, and at last perfected by the people, and flowed as a consequence from their

principles and feelings. It was of slow growth, keeping pace with the formation of the national character, and when accomplished was permanent, because the new institutions sprang from, and were adapted to, the views and wants of those who established them.

The wisdom and forecast of the framers of our state and federal constitutions are often highly commended, and some persons are so extravagant as almost, if not quite, to accord to them the spirit of prophecy; but their true merit, and great indeed it was, consisted in laying aside all schemes of personal ambition and aggrandizement, and seeking honestly and carrying out fairly the will of the people, or, in other words, establishing forms of government which their principles and wants indicated, if not demanded. The wonderful progress which the nation has made under these institutions during the last fifty years, is owing, I apprehend, as a primary cause, not so much to their excellence, pre-eminent though it may be, as to the characteristics of our people. We have been hitherto, as a nation, Christians, acknowledging our dependence upon, and seeking the aid and protection of, the Creator and Ruler of the earth. We have been just towards other nations, wakeful and resolute in maintaining our personal and national independence, frugal and unostentations, lovers of our homes, and sharers of the delightful, purifying, and elevating influences of the domestic circle. These estimable qualities have tempered while they have strengthened and directed our enterprise.

But a calm and intelligent observer, earnest for the continued prosperity of our country and the exercise of a healthful influence, by our people, on other nations, cannot fail to see indications of relaxing, if not of absolutely falling away, from our high-toned national attributes.

Far be it from me to undervalue, though it may not become me, an American citizen, to speak boastingly, of the commanding position our country has obtained, and now holds among the nations of the earth, and of the astonishing progress she has made in all the elements of true greatness. Yet every candid and well-informed man must admit, that of late years the tendency of things is to weaken the binding force of stern moral principles, and to depart, in our manner of life, from the frugality and simplicity of former years. There are too many well-

ascertained facts which furnish decisive evidence of this. I will mention a few of them.

Our history, from the landing of our Pilgrim Fathers to the present day, shows one thing most clearly, and that is, that our pulpit has always inculcated a pure and inflexible morality, and enforced the obligations of duty in all the relations of life by the strongest sanctions. It has always been, and still is, our most honored and effective instrumentality for maintaining a pure and lofty national morality. The unhappy fact, and the one indicative of our moral decline, is the great disparity which of late years has arisen, and is daily increasing, between the amount of our population and the number of able and faithful ministers of the Gospel.

The Bible, until within the last ten or fifteen years, was used as a school-book in all our schools. Many in this audience must remember how constantly it was read in the schools they attended. Not only were portions of it read every morning in the devotions with which the schools were opened, but hourly during the day, as an exercise in reading. Thus all, who during the last century and the early part of this one, enjoyed no other advantages of education than those afforded by our ordinary schools, were acquainted with the contents of the Bible, and if the precious volume did not prove "a savour of life unto life" in the salvation of their souls, it imbued their minds with the pure morality which it teaches, acquainted them with the solemn sanctions of moral obligations, gave them just views of their rights and duties, inculcated the true principles of government—in a word, taught them to be just, wise, and true men. While enjoying the protection afforded by our institutions and laws, we overlook their source and true foundation. There is not a principle of government announced in our federal or state constitution, or a principle embodied in our system of written and unwritten law, the prototype of which cannot be found in the Bible. The scholar and jurist who will analyze our constitution and laws, extract and set forth in order their leading principles, and place them in juxta-position with their originals in the Bible, will perform an interesting and instructive task, and give to the American public a very valuable book. Many a judge and lawyer, who have studied their profession with more assiduity than they have

searched the Scriptures, are little aware, that in many instances they are enforcing divine precepts while executing the laws of the land ; and many a father and mother, who are more intent on making a figure in life than in storing their own minds or those of their children with heavenly wisdom, would be amazed to learn that they hold and enjoy their houses and lands, their costly furniture and splendid equipages, by laws recorded and first declared in the oracles of Infinite Wisdom. This book, the very fountain of perfect knowledge, where alone can be found the precepts and instructions essential to the right culture of our moral nature, where alone an American citizen can find the fountains from whence flow the principles of his government, and where alone he can learn the lessons of wisdom and virtue, which qualify him for self-government—yes ; this book is no longer a class-book in our public schools.

I stop not to inquire how, or by whom, this has been accomplished, nor whether there are or are not countervailing benefits in support of the measure—I simply note the fact, as one evidence of a decline from those stern principles of moral rectitude, which prevailed in former years.

Some of our eminent citizens, whom we have placed in stations of high public trust, within the last few years have avowed a loose national morality, particularly in respect to the acquisition of territory. These latitudinarians cover their false doctrines under the delusive guise of our country's destiny. Our beloved country, no doubt, has a destiny—a high and glorious destiny—but one, I trust, to be accomplished in maintaining the rights and performing offices of kindness to our neighbors, rather than wresting from them their possessions. Modern French history teaches a solemn lesson on the subject of wrongful national extension and aggrandizement, under the delusion of thereby accomplishing a nation's destiny. While Napoleon with his armies was devastating Europe, deluging that continent with blood, and sending hundreds of thousands of his fellow-men to untimely graves, he was said to be fulfilling his destiny, and under this specious illusion the world was in some measure reconciled to his appalling crimes. How speedily came the retribution we all know.

Allow me to mention in passing, as an encouragement to

meritorious and truly patriotic deeds, that while the bloody feats performed by this "Man of Destiny," as he was called, on the fields of Marengo, Austerlitz, and the like, will be forgotten, or remembered only to be condemned, the Code Napoleon, a work of peace, wisdom, and patriotism, will be held in profound admiration and respect. This body of wise and just laws, in the framing of which the Emperor exerted his best talents, have remained in operation, and protected the private rights of Frenchmen during all the violent revolutions which have occurred in that restless country since their adoption. The French people are now daily enjoying the priceless blessing of good laws, faithfully administered; and while this living witness of Napoleon's wisdom and patriotism continues to speak in the presence of his countrymen, they will love and revere his name. This monument of his true greatness will stand, not only as long as France shall have a name and a place on the earth, but as long as the principles of justice and right shall command the homage of men.

We must return to our subject.

The countenance, though small, which our people have given to the loose doctrines before mentioned, respecting the acquisition of territory, or rather, perhaps, I should say, their omission to meet them with a decided and universal denunciation, augurs unfavorably of a steady and firm adherence to those principles of national right, which we have hitherto advocated and practised.

I will mention only one more evidence of our departure from the good ways of our fathers.

We are putting too high a value on the pomp and circumstance of life. We are eager for wealth, not to use so much for the culture of our minds and hearts and the intellectual and moral improvement of the human family, as to display it in costly establishments and expensive living. This is very obvious in our cities, and especially in our commercial metropolis. But everywhere, throughout our whole country, the tendency of the general taste is towards ostentatious display. The qualities of the mind and heart are too little valued in comparison with the trappings of wealth. Our institutions were established for a frugal people, who practised the virtues of economy and self-denial. We depart from the spirit of those institutions and the



example of our fathers when we place riches before intellectual endowments and moral worth.

These general views of the progress of our country, and the presentation of some of the points where commencement of decay shows she requires strengthening and guarding, will enable me to speak more directly and intelligibly to the specific inquiry in hand, viz., What are the duties of our educated citizens, and particularly of parents and teachers, in connection with the rapid, onward movement of the nation?

The first of their duties is the ascertainment and due appreciation of the responsibility resting on them.

We think of almost every duty before this one. Few of us stop, in our pursuit of riches and strife for distinction, to take thought of the rapid strides with which our country is moving on to colossal dimensions and power; and fewer still, indeed scarce any one, occupies a moment in considering the nature and extent of his accountability to his country, the world, and his God, for the agency he exercises, or omits to exercise, in directing the influence this already great, and, in prospect, mighty, nation will exert for good or evil on the human family.

Let any one of us who has enjoyed the advantage of an education, and whose mind is stored with useful knowledge, put to himself the question, What have I spoken or written to form a sound public sentiment, or direct the energies of my country to right ends? The answer, candidly given, I apprehend, will in no instance be entirely satisfactory, and in most instances produce only mortification and regret; and when the further question is asked, What have I done, in view of, and with reference to, the *progress* of my country, to keep her public sentiment in right channels, and maintain her national morality in pristine purity? the answer, I fear, will humble the inquirer, and oblige him to confess his utter delinquency.

These questions may, and should be, put to herself by every educated American lady. The kind regard and just respect with which American women are treated on American soil, is one of the best traits of our national character, and adds greatly to their means of usefulness. In no sphere of her duty is woman more lovely or potential than in moulding the will and leading the thoughts of man. In our happy land she takes a large share,

and incurs a like responsibility, in forming public opinion and inculcating a sound morality. Her power for good is great, and let her see to it that this power is so exerted, that the nation who holds her in the highest estimation, as it spreads over our continent and controls the world, shall uphold right, denounce wrong, maintain peace, and show good-will to man.

There is another class of our citizens on whom the responsibility of which we are speaking presses with a still heavier weight, and on whom a still stronger obligation rests to appreciate and meet it. They are parents and teachers. The children and youth now trained and taught by them will be a part of the one hundred millions of people who will constitute the citizens of the United States of America at the close of this century. Who can tell the terror, or love, the banner of our country, the stars and stripes, will that day carry to the hearts of men? Will the nations of the earth tremble with fear, or their grateful hearts swell with joy, as our proud flag approaches their shores? Answer, ye fathers, whose sons and daughters treasure up your words of counsel and instruction, and bear on their hearts the impress of your example. Answer, ye mothers, whose union with a beloved husband a gracious God has crowned with the gift of immortal spirits to train for His glory and the good of His creatures. Answer, ye teachers, ye men of learning, who are honored with the truly noble office of instructing American youth, and storing their minds with principles and knowledge for the discharge of duties which will affect the whole human family for weal or woe. Let each parent and teacher ask himself, what education or instruction he has given to his child or pupil in view of preparing him for the duties which the approaching vastness of our country and nation will cast upon him. A conscientious answer will lead to a knowledge of past deficiencies, and point out the line of duty for the future.

The next duty I will speak of relates to home influences in the formation of character.

Our word *home* conveys to the mind a combination of hallowed thoughts and sympathies, which may be felt but, cannot be described. Montgomery has attempted it in his well-known lines, which are familiar to many, and should be to all. With your leave, I will repeat them:

" There is a land of every land the pride,  
 Beloved by Heaven o'er all the world beside ;  
 Where brighter suns dispense serener light,  
 And milder moons emparadise the night ;  
 A land of beauty, virtue, valor, truth,  
 Time-tutor'd age, and love-exalted youth ;  
 The wandering mariner, whose eye explores  
 The wealthiest isles, the most enchanting shores,  
 Views not a realm so bountiful and fair,  
 Nor breathes the spirit of a purer air ;  
 In every clime the magnet of his soul,  
 Touch'd by remembrance, trembles to that pole ;  
 For in this land of Heaven's peculiar grace,  
 The heritage of nature's noblest race,  
 There is a spot of earth supremely blest,  
 A dearer, sweeter spot than all the rest,  
 Where man, creation's tyrant, casts aside  
 His sword and sceptre, pageantry and pride,  
 While in his soften'd looks benignly blend  
 The sire, the son, the husband, brother, friend ;  
 Here woman reigns ; the mother, daughter, wife,  
 Strews with fresh flowers the narrow way of life ;  
 In the clear heaven of her delightful eye,  
 An angel-guard of loves and graces lie ;  
 Around her knees domestic duties meet,  
 And fireside pleasures gambol at her feet.  
 ' Where shall that land, that spot of earth, be found ?'  
 Art thou a man ? a patriot ? look around ;  
 Oh, thou shalt find, how'er thy footsteps roam,  
 That land *thy* country, and that spot *thy* home."

This description, beautiful and touching as it is, has one prominent defect. The family altar is not mentioned, and no picture of "sweet home" is perfect in which *that* has not a place. Burns, more true to nature, has not forgotten it in his inimitable description of the cotter's home, and presents it in the following affecting lines :

" The cheerfu' supper done, wi' serious face,  
 They, round the ingle, form a circle wide,  
 The sire turns o'er wi' patriarchal grace,  
 The big ha'-Bible, ance his father's pride,  
 \*   \*   \*   \*   \*   \*   \*  
 And ' Let us worship God ! ' he says, with solemn air,

\* \* \* \* \*

Then, kneeling down, to Heaven's eternal King  
The saint, the father, and the husband prays."

It has been often said, and probably with truth, that the Anglo-Saxon is the only race of men who have homes in the true sense of that delightful term. I think it may be said with greater accuracy that only those nations who have adopted the principles of the common law, and by them regulated their domestic relations, have *homes*. That system of laws, prevailing in England and brought to this country by our forefathers, has made our homes what they are; and I cannot forbear the remark, that it is deplorable that our Legislature, giving heed a few years since to the worse than foolish cry of "woman's rights," passed a law which will reduce the sacred and blessed bond of marriage to a mere partnership between husband and wife; and for the loveliness and purity of this happy union, we shall have in this state the chilling indifference and offensive immoralities which prevail in countries where similar laws regulate this important domestic relation. The public have not yet seen and felt the effect of this statute. When they do, I trust it will be denounced and repealed.

Our homes have hitherto been the delightful sanctuaries of our best thoughts and feelings. They must be kept so, if we would be a truly great and virtuous people. But our homes have heretofore, and must hereafter, perform a still more important office. They must mould the hearts and minds of our children into models of republican excellence. There they must be imbued with the pure morality, the stern integrity, the steady independence, the simple tastes, the frugal habits—in a word, they must there obtain the elements of American character—there receive the foundation of those qualities which fit them for their high duties.

To make home an efficient instrumentality to accomplish this purpose, it must be pleasant and inviting.

To make it so, is woman's right and duty. Home is her empire. Here the mother, daughter, sister, wife, can, if she will,

"Strew with fresh flowers the narrow way of life."

She has it in her power to draw homeward, and bring within the reach of domestic influence,

The sire, the son, the husband, brother, friend ;”

and when there, by winning grace and a well-stored mind, to delight and instruct him, mould his will, and direct his thoughts to noble ends. The charm of home is almost wholly hers to bestow or withhold. Neatness, order, quietness, cheerfulness, are all her own. She may diffuse them with a bountiful hand, and render her house a delightful abode. Amusements and topics of conversation are also subject to her selection and control. In fine, she is the reigning spirit, and at her pleasure can give light and life in this her own dominion.

Our dwellings ought also to be so constructed as to give them a domestic air, and encourage social and home feelings. There is more in this than is generally supposed. The internal divisions and construction of some houses are such as to give them an open, vacant, and unsocial air, which discourages and repels domestic feelings. A dweller in them feels as if he was still homeless, and a child reared in them never imbibes a strong home-feeling. A house planned and built for large entertainments, balls, and display, as too many of our modern dwellings are, is no place to form the young heart for domestic life and duties, and cherish the sweet sympathies of home. There may be taste, and even elegance, but when the door opens and the inmate enters, the very arrangement and aspect of the house should invite to comfort, repose, sociality, and peace.

Nor should the location and exterior of the dwelling be disregarded. When circumstances will permit, a pleasant spot should be selected for a home. The scenery which surrounds us in early life has much to do with the formation of our character. History, biography, and observation establish the truth of this remark. There is a strong sympathy between the human heart and the works of creation. The beauties of nature touch the spirit of man. They are all divine, and awaken in the young soul pure, lofty, and oftentimes heavenly aspirations. The tree, the grove, the hill, the rivulet, the lawn, the meadow, are also objects of endearment, and draw the wanderer home. The exterior of our dwellings should not wear a naked, solitary, and



unsocial aspect, nor a stately and forbidding one. It should bear the impress of comfort and retirement; and if the location will permit, the shady tree, the flowering shrub, the evergreen, and the lawn should give it gracefulness and beauty.

But the crowning grace to render home an efficient agency for training youth is the spirit which pervades and the mind which controls it. Here is a post of duty on which parents should never sleep; and yet how few parents cultivate their minds and discipline their spirits, with a view to qualify themselves for the discharge of their duty to their children in the domestic circle? How painful the thought, that many fathers waste precious hours daily the year through, and even year after year, in amusements which only gratify the senses, when they might spend those hours in some useful and elevating pursuit, and thereby not only set a good example before their children, but acquire knowledge and ability to instruct and guide them. More painful still, is the spectacle of a mother, who worse than wastes hours and days in reading silly tales of fiction, when she might employ the time in storing her mind with golden lore, with which to enrich the opening intellects of her sons and daughters.

The field is wide for surveying and enforcing the obligations of parents to diffuse a right spirit, to encourage and direct a proper train of thought, and improve the means of instruction furnished in the home over which they preside. But my present object is to bring to their view only one point of this field; and that is, the increased force of those obligations arising from the fact, that the sons and daughters now under their training will exercise an influence and fill a sphere of usefulness immeasurably greater than we now do. Let the father and the mother remember, that the principles they are now inculcating by example and precept on their son or daughter, will unfold, mature, and form a part of the public sentiment of this great nation at the close of this century—that an article which that son may write for a public journal, or a speech he may deliver at a public meeting, or in a deliberative assembly—that a thought which that daughter may suggest to a husband of talent, or convey herself to the public through the magazine or journal, may move the nation and affect the world.

The next and last duty of which I will speak, in view of the progress of our country, is that which devolves on teachers of our youth.

The good and faithful Fenelon, when he accepted the honorable and responsible appointment of tutor to the young Duke of Burgundy, the heir-apparent to the French crown, and always while discharging the duties of his position, was deeply impressed with the thought that the prosperity and happiness of the French nation depended on the ability and fidelity with which he executed his high trust. He was earnest for the welfare of his pupil, as an individual, in this life and the life to come, yet the inestimable blessing of a wise and virtuous ruler to his beloved France, and his more beloved countrymen, was the impelling motive to writing the interesting and valuable books which he did for the improvement and instruction of his charge, and to his unceasing efforts to make him a good and wise man. The success of Fenelon should be an encouragement to all who have the training and instruction of youth, to persevere though the objects of their care may be unpromising. This Duke of Burgundy, when handed over to his tutor, was a perverse, bad-tempered, wicked French boy. The true and faithful man labored perseveringly until he made him a good and a wise prince; and when removed by death in his young manhood, before he reached the throne, France mourned deeply and sincerely. Although young, and brief and limited his career of usefulness, he yet reaped a patriot's rich reward—

“His country's tears bedew'd his cold hearse.”

The training of American youth in the present stage of our nation's progress, is a more responsible trust than even that committed to Fenelon; inasmuch as the youth of this day will guide our future mighty empire, and the happiness, not only of one hundred millions of Americans, but of the whole human family, will depend on them. It is an interesting fact, that every American youth is an heir to the American crown. Each one is in the line of succession and in equal degree. Each youth is also a like heir to every post of honor, profit, and influence in the country; and although no one in particular is certain of the inheritance, yet it is *certain* that several, even many of them, will

obtain it. That youth may now be receiving his education in this college—may now hear my words—who shall be the Chief Magistrate of this nation. How important to the well-being of our countrymen and fellow-men, that the true elements of American character should be deeply and firmly planted in his bosom. Say not his elevation is too improbable to form a basis for duty. Read an account of the youth and early manhood of Presidents Van Buren, Fillmore, and Pierce, and you will see that there are many youth now under instruction in this institution, who have better grounds to expect that greatest earthly honor than either of those distinguished gentlemen had in his youth.

The sovereign power in this country, however, rests where it does in no other land. It lies in the free will of the people, and that will constitutes public sentiment. Neither our laws or constitutions, state or general, can stand a day in opposition to the will of the nation. The former are repealed, and the latter amended or abrogated, whenever public sentiment so decrees. “We live, and move, and have our being,” as a nation, in public opinion. Our laws and constitutions are only expressions of that opinion. Our educated youth of this day, as a body, must and will form the public sentiment, and thereby hold and exercise the sovereign power of the country. Hence, there is not a youth in the land, male or female, whose education is not of great consequence to the country and the world. Each will certainly have and exercise a portion of sovereign power. How great a portion of that power each one shall have, and to what end, good or evil, exercise it, greatly depends on the extent and character of the education received. Where is the conscientious instructor of American youth, who estimates candidly and understandingly his duty and responsibility, who does not feel that he is not sufficient of himself for his high trust; and that he must have the blessing of heaven, and the aid of Infinite Wisdom, to discharge well his duty. If the post of honor is the post of responsibility, as it generally is and ought always to be, who more deserves the gratitude of his fellow-men than the able and faithful teacher of our youth? No position presents a larger field of usefulness, or addresses to the incumbent stronger or higher motives for faithful discharge of duty than his. The mind cannot comprehend lan-

guage, much less express, the effects on the human family of one sound principle effectually imbedded in the heart of an American youth of talents. The teacher who does only *that*, accomplishes a great work for his race, and if he does it often and continually for a life, how can we measure the extent of his reward, or count the debt of gratitude to which he is entitled? No teacher, however large his endowments, or high his qualifications, can hope to magnify his office. His office will ever magnify him.

The youth who have heard the preceding remarks will not fail to have observed how deeply they are interested in the subject. The history of the world does not present another such a field for effort as this day lies open before American youth. Were there time, I should take pleasure in surveying with those present, and opening to view, the various long and wide avenues to usefulness and distinction, which the certain and prospective greatness of our country invites them to enter. But there is not; and I will only say to them, that when their minds stretch forward into active life, and they view in prospect the goal they hope to reach, they should always entertain a realizing sense of the truth, that the severer virtues constitute the elements of American character, and that the cultivation and practice of them give it its distinctive excellence. No youth of intelligence, living in this era of our history, will, nor ought he to, underrate his own value to his country and the world. While he should rightly estimate his own great worth, however, let him beware of and promptly suppress all emotions of elation and pride, and remember that "The meek shall inherit the earth."

SAM'L A. FOOT.

GENEVA, *July 1, 1853.*

No. XLIII.—VOL. 1, p. 299.

*Dedication of a Cemetery.*

MY FRIENDS:—In obtaining and setting apart this beautiful piece of ground for a burial-place, you have followed the promptings of affection, and the example of the wise and good in every age, from the time when Abraham purchased the field of Ephron, containing the cave of Machpelah, to the present day. *Here*, you intend that your own bodies and those of your children, relatives, and friends shall be laid, and *here* lie undisturbed till the last trumpet shall call the dead from their graves, and “this corruptible put on incorruption, and this mortal put on immortality.”

When death comes and dissolves the mysterious union of the body and spirit, we reluctantly admit the thought that all of life is gone. We still stand around and look upon the cold inanimate body with interest, respect, and solemnity. We are conscious of a lingering feeling that we are viewing something beside a mere mass of decaying matter; and when our duty to the living requires us to bury our dead out of our sight, memory retains the image of the form which we have laid in the grave to moulder. But when death enters our own domestic or social circle, and dissolves the sacred bond which unites husband and wife, or removes a revered and beloved parent, an affectionate and dutiful child, a kind sister, a manly, warm-hearted, noble brother, or a faithful and devoted friend, then our bereaved hearts *repel* the thought, that the form which in life was full of activity, beamed with intelligence, glowed with feeling and sentiment, and buoyant with joy and hope, is, when the spirit is gone, only senseless clay; and long after decay has done its work, and dust is mingled with dust, we retain a vivid recollection of the image and virtues of the departed one; we cherish and remember the manly form, steady affection, watchful care, and perhaps christian spirit of a husband, the kind offices and devoted affection of a wife, a father's counsel, faithful admonitions, liberal gifts, fervent prayers, and earnest efforts for the temporal and



spiritual welfare of his children, the tender and enduring love, patient forbearance, and unceasing care of a mother—the affection, winning ways, and opening faculties of a child—the noble bearing, true heart, and bright intellect of a brother—the graceful manners, cheerful temper, and unwavering affection of a sister, and the social feelings, sincerity, and disinterestedness of an attached friend. Those of us who stand in any of these endearing relations, and survive those whom we love and admire, never do, and never can, allow the thought that their death separates them from us forever. As the restlessness, discontent, and a continual reaching after something unattainable, felt by all in this life, indicate the immortality of the soul, so does this lingering hope of meeting again those dear to us in this world, and who have been removed by death, confirm the delightful thought imperfectly revealed in Holy Writ, that we shall meet and recognize each other in the world of spirits.

It is, then, natural and not unreasonable that loving hearts should wish to lie beside each other in the grave. Husband and wife, who have lived, and labored, and mourned, and rejoiced, and prayed, and worshipped together, do not wish to be separated in death; they desire to sleep the long sleep of the grave beside each other, and if brother and sister in Christ, they hope to rise together on the great day of account, and as disembodied spirits together join the assembly of the saints in glory. So parents and children, brothers and sisters, friends and neighbors, who have loved and esteemed each other in life, and been united by bonds of affection and reciprocal kindnesses, are unwilling to be divided and scattered in death. They wish to lie near each other in their graves, and occupy the same hallowed ground.

You, my hearers, and your children after you, will enjoy the melancholy though soothing anticipation of resting in your graves beside those who loved you in life. Many of you will be allowed to live after many others of you have gone to your long rest; and as those who survive walk over these grounds, and look at the monuments which mark the places where the others lie, death will be disarmed of some of its terrors by the thought that when they are called to their final home, they will be laid beside those who were dear to them in life.

This sentiment of companionship in the grave, and the love

and respect which the living entertain for the memory of the worthy dead, have led to the building of tombs and the establishment of public cemeteries among all civilized nations. The Egyptians erected their pyramids, and the Greeks and Romans their temples, over the graves of their kings and distinguished men. And, in each nation, public burial-places were provided and held sacred, and in them the living were allowed to deposit their dead in the confidence that their remains would never be disturbed. Even the savages of our own wilderness feel human ties so strongly, and have so firm a faith in the existence of the Great Spirit, and of a life beyond the grave, that they not only bury their dead with ceremonial solemnity, but provide a common tomb, in which their braves, who have fought side by side in life, sleep side by side in death—and in which the Indian family, who have lived and wandered and suffered together, are permitted to rest together in their final home. Over these tombs the untutored but warm heart has raised mounds of earth, and to these sepulchres of their fathers the sons of the forest make annual pilgrimages.

But the Christian dispensation, revealed in the Old and New Testament, disclosing, as it does, in letters of living light, the existence of our God, the immortality of the soul, the resurrection of the body, redemption by our Saviour, and an eternity of bliss in the presence of God, heightens and strengthens the feeling to honor and lay in undisturbed repose the bodies of those we love, and hope to meet in heaven. In accordance with this sentiment, sanctioned and confirmed by divine teaching, and for our example, the Father of the Faithful procured the cave of Machpelah, and in it he and Isaac, and Jacob, Sarah, and Rebecca and Leah were buried. Under the new dispensation, and as Christianity spread and acquired influence, the sepulchres of the martyrs and other Christians were treated with still greater regard. The former were considered sacred, and churches and chapels were erected over them; and the latter were placed near the former, and often in the churches, it being held an honor to be buried near the sepulchre of a holy martyr.

As Christianity extends and gives tone to public sentiment, respect for the dead is augmented, and greater attention paid to the places where they are laid. This remark is especially true

of our own country, and is a gratifying evidence of our progress in Christian feeling. You will readily call to mind the beautiful cemeteries near the cities of New York, Boston, Albany, Rochester, and many other cities and villages, too numerous to mention; and to the honored list will be added, hereafter, this respectable town.

Allow me to congratulate you on the acquisition and dedication of this beautiful and appropriate lot of land as a public cemetery. The measure furnishes high evidence of your liberality, taste, and Christian character. I claim a right to share, and do share with you, the gratification which its accomplishment justly affords. Although I left this town many years since, yet here was I born and reared, and my father before me. The very farm which my grandfather purchased in a state of nature, and cleared, and on which he raised a numerous family, is now owned and occupied by one of his lineal descendants. On it my parents spent a life of toil to support and educate a family of sons and daughters. In yonder burying-ground are the graves of my ancestors, of my relatives, and of many of my playmates in childhood; while, through your kind remembrance and friendly partiality, I, the youngest and almost the last of a large family, am here, with the marks of age upon me, to assist you in dedicating this spot of earth to the services of the dead, and providing for their ashes "a field of peace." Whenever my thoughts carry me back, as they do irresistibly on this occasion, to the morning, in this very month, when a mere boy and on foot, but full of youthful energy and hope, I left my father's house to receive in another state the proffered aid of an elder brother to obtain an education, and I recall the spectacle of the old red house, and of my aged parents, who, in parting with me that morning, parted with their last child at home, standing together at the southwest corner of it, looking after me as I rose the hill northward, until a turn in the road took me out of their sight, and look around on this audience, and over this town, I cannot forbear the exclamation, oh! what changes! How few, how very few, of those who were then in life now hear my voice! Some have moved away to other places, but most of them lie in yonder graveyard. How many worthy names we could recall, if time allowed, of those who, after well-spent lives, have gone

to their rest! What a different aspect, too, your town now wears! One of the old churches has disappeared, and the other will soon follow, and new and better ones erected. The old red school-house, too, is gone, and you have got a new, and doubtless better one. But when I missed it yesterday, my heart was sad; and so, I venture to say, were the hearts of many of you, when it was removed. Around that old school-house, childhood's recollections cluster with almost filial love. In it, for three-quarters of a century, the children and youth of this town were taught the elements of knowledge and the principles of true morality. The Bible and Webster's Spelling Book were the great fountains of knowledge and truth resorted to, and they were faithfully read and taught. How many clear heads and pious hearts can trace the first opening of the mind, and the first holy impulse of the soul, to the instruction received in that good old school-house! If the occasion were proper, how pleasant it would be to recall, by the aid of tradition and early recollections, the names of the many faithful teachers who have taught in it! Two I cannot omit to mention, for they devoted the best portion of their lives to instructing the children of this town, and their kindness and fidelity are remembered by many with affection and respect. Those names are William J. Punderson and Theophilus Baldwin. The former went to his rest and reward many years since—the latter is still among you waiting for his.

Let me mention some other changes which I have noticed. Very few of the old dwellings remain. Larger, handsomer, and more convenient ones supply their places. Your farms are far better cultivated, and more beautiful, and more productive. Manufactories have been established, and are prosecuted with success. Wealth has rewarded your industry and enterprise, and you are enjoying, in a high degree, the bounties of a kind Providence. While these changes move and solemnize our feelings, they also furnish pleasing proof of the progress of improvement, and the advance of civilization.

We must not, however, indulge too long in complaisant meditations and remarks respecting changes in society, and a resting-place for the dead; but I must endeavor to avail myself of the occasion to say something more direct to improve and benefit the

living; "for there is no work, nor device, nor knowledge, nor wisdom in the grave whither thou goest."

It has been said of Baxter, in reference to his "Saint's Rest," and of Bunyan, in reference to his "Pilgrim's Progress," and may be said with truth of every one who leaves on record behind him words of wisdom and instruction, that "though dead, he yet speaketh." And so I think it may be said of every wise and good man, and of every true Christian, young or old, in reference to his grave. Although the monument which marks the place where lies his remains, may not have engraven upon it his words of wisdom and piety, to be read by all who visit it, yet there comes a voice from his tomb, in the form of revived recollections, which moves the heart of the visitor, and is potent for good.

If we could at the present day identify the rock, and the tomb of Joseph of Arimathea hewn out of it, in which he laid the body of the Saviour, how many thousands and tens of thousands would make pilgrimages to the Holy Land to view the sepulchre where Jesus lay! And who could stand before and look into that tomb, and not feel a holier love, and a deeper gratitude to our dear Redeemer, and a stronger faith in his saving doctrines? Was there a monument at Rome over the grave of the intrepid Apostle Paul, showing where his ashes rest, visitors to that emporium of ancient and modern art would pass by all the wonders of painting, and sculpture, and architecture, which abound on every side, and go first to view his grave. Standing by it, memory would recall his humility, zeal, fearlessness, profound knowledge, powerful reasoning, able teaching, self-denial, unceasing labors, sufferings and martyrdom; and every one would withdraw from the hallowed spot with his Christian sympathies revived and strengthened, his zeal warmed, and his resolution to live a holier and better life fortified.

Every citizen of our republic who visits Mount Vernon, and views the tomb of Washington, recalls with fresh interest and in stronger light the moral beauty of his character, and the impressive incidents of his life. He dwells with deeper gratitude upon his invaluable services in the field and cabinet, his wise and last counsels in his farewell address to his countrymen; and when he retires from the tomb of the Father of his country,



he is a worthier son of that country, loves her and her institutions more ardently, is a truer man, and a better patriot.

With equal truth, and almost equal force, may like observations be made respecting the graves of those who have acted in limited spheres of life, and not been so fortunate as to leave for posterity written and world-wide memorials of distinguished usefulness.

There are sons and daughters in this assembly, whose parents, though their names are not inscribed on the scrolls of fame, yet faithfully, wisely, and kindly discharged all the duties of life, brought up their children in the way they should go, and when removed by death were followed to their graves by many sincere mourners. Their memory is cherished with affection and respect, and will continue to be. No child of theirs can visit their graves without a refreshed remembrance of their excellent qualities of mind and heart, without an awakening of the many emotions which fill a child's bosom, and form one of the brightest aspects of human character. Such a visit to such graves produces a benign influence, and if made by a son, makes him a better man; and if by a daughter, makes her a more lovely woman. If death takes away a son or daughter who has "remembered their Creator in the days of their youth," or a child so young as to belong to that blessed company of whom the Saviour said, "Suffer little children to come unto me, and forbid them not, for of such is the kingdom of heaven," and the parent visits the grave of that child, and as he stands beside and looks upon it, he will find the bond which binds him to earth loosened, and his soul drawn upward toward heaven where is garnered his choicest treasure.

Let us now, my friends, apply these remarks to their practical end.

What thoughts and emotions do we wish our graves to excite in the minds of those who visit them? If we are parents, what would we have our children think and feel, as they stand beside our graves and recall us to their memories? Should any dear youth, son or daughter, in this assembly, be removed by death in the spring-time of life, what would he wish his beloved parents, his brothers, sisters, and schoolmates to think and say of him, as they came to view the place where his mouldering body

lay? Should any one of us have been honored by our fellow-citizens with public trusts, and permitted to serve our town, state, or country in official stations, or, by our talents and acquirements, been able in some other way to confer important benefits on our country, or render valuable services to our fellow-citizens, what should we desire to have said of us by those who, in their walk through the cemetery, might notice the monument over our grave, and stop to read the inscription? All will give but one answer to these questions. I need not clothe that answer in language—your own reflections will furnish it.

Not only do we desire, in obedience to the impulses of our hearts and the sympathies of our nature, that our graves should awaken right thoughts and proper feelings, but we are under strong obligations, enforced by high sanctions, that the language which they speak shall improve the living. Our example lives after us, and we are just as responsible for the influence which it exerts after death as before. When our graves revive the recollection of our lives, if that recollection does not benefit and improve the rememberer, but, on the contrary, draws him into error, immorality, or crime, we are answerable for the result. Every member of this community, every citizen of this great and growing nation, is bound so to live, that when removed by death, his neighbors and fellow-citizens, as they stand by his grave, may be able to say with truth, his death was a great loss—he was an honest man, a kind neighbor—he had more than ordinary intelligence, he improved all his spare time by reading—he had a good understanding of the affairs of the country—though an industrious man and careful of his money, he was still always ready to help the poor, and do his part in contributing to public objects. And, my friends, the obligation is still stronger so to live that it may be added—he was a pious man, and sincere and humble Christian.

Every man who has enjoyed the advantages of education, who has had time and means to store his mind with useful knowledge, is bound so to use his talents and learning in life, that after death his grave shall inspire every person who visits it and reads the inscription on his monument, with greater reverence for the Word of God, a holier spirit, a more fervent piety, a warmer love for his fellow-men, a more active benevolence,

a purer patriotism, and a higher estimate of moral excellence.

A father has only performed part of his duty to his children, and a mother only part of hers, unless they have so lived, and so discharged their parental obligations, that when death removes them, the monument which their children place over their graves becomes a shrine which those children love to visit, and beside which they love to stand and recall the features, the enduring love, the faithful counsel, the firm but kind admonitions, and the earnest prayers of their departed parents. Neither has a son or daughter discharged their filial duties in life, unless a view of their graves opens afresh the fountains of parental grief and draws heavenward parental hearts.

Here, my friends, in this quiet and beautiful piece of ground which we are this day dedicating as a cemetery, and which you will ornament with paths, and trees, and shrubs, and flowers, will be your graves. Your neighbors, townsmen, and sometimes strangers, will walk through this burial-place, look at your graves, read the inscriptions on the monuments, think and speak of you, if they knew you in life, and if not, will inquire about you and learn who and what you were.

Children will come here to look after the graves of their parents; and oftentimes after an absence of years in a distant state or country, a son or daughter will return to their native town, and come here to look once more at the graves of an honored father and affectionate mother—brothers will come here, and perhaps some after a long absence, to see again a dear sister's grave, whom her Heavenly Father called home when full of youth, beauty, life, and joy—fathers and mothers will enter these grounds again and again to look at the graves of their children, their dear children, taken from them in the innocence of childhood—in the hope, health, and strength of youth.

Who in this assembly can endure the thought, that the sight of his grave shall carry a pang to the heart of the spectator? or that those to whom his memory should be dear, as they approach his grave, will turn away to avoid the unhappy recollections which his name on his tombstone will recall? Oh! my friends, let us try to live "as we shall wish we had when we come to die," that the memory of us may be sweet, and "a savor of life unto life."

No. XLIV.—VOL. 1, p. 301.

*A Temperance Prohibitory Law.*

A letter from Governor Dutton, of Connecticut, giving most unimpeachable evidence of the value of the prohibitory liquor law in the state over which he presides, appeared in our last number. We follow it up this week with three other letters corroborative of Governor Dutton's testimony, addressed to E. C. Delavan, Esq., of Albany, in the state of New York, and inserted in the *Prohibitionist*, a paper of which Mr. Delavan is the editor.

The first of the three letters hereunder is from the Hon. Samuel A. Foot, of Geneva, late judge of the New York Court of Appeals. The second is from the Rev. Dr. Hawes, of Hartford, who for more than a quarter of a century has been justly recognized as standing at the head of the Congregational clergymen of Connecticut. The writer of the third is the Hon. Thos. S. Williams, late chief justice of Connecticut. More authoritative testimony to the efficiency of any law could not possibly be desired.

GENEVA, February 26, 1855.

E. C. DELAVAN, Esq.—*Dear Sir*: In accordance with your request of the 23d instant, I take pleasure in stating that until last September I had serious doubts of the policy of enacting in this state a prohibitory law, in consequence of my apprehension that it could not be executed, and for that reason would retard rather than promote the cause of temperance. But last September I made a visit to a nephew of mine, who resides in the state of Connecticut. He is a practical farmer, but a gentleman of intelligence and good sense. He informed me, as indeed I knew before, that he had opposed the passage of the Maine law in that state, because he considered it tyrannical and its execution impossible, particularly in the cities of New Haven and Hartford and in the manufacturing villages, where a majority of the people are hard and habitual drinkers. But, said my nephew, "experience shows that I was entirely mistaken; the law has been executed *everywhere*, without the least difficulty, and its

blessings are incalculable—with the cessation of drunkenness (for it has almost ceased among us), crime and pauperism have comparatively ceased. It will diminish the poor-rates in our town full three-quarters, and we do not have one arrest now for crime in our county where we had ten before. There is one element, and a very important one too, to be taken into account in executing the law, that I had not thought of, and that is, those who would be riotous under the influence of liquor are passive and submissive without it. With the free use of liquor through the states there would be riotous opposition: without it, there is none.”

The above are the words in substance, and most of them the identical words, of a practical, well-informed Connecticut farmer. They removed every doubt from my own mind; and were I a member of our Legislature, should vote for the law lately passed in the Assembly most cheerfully.

Respectfully, your friend and servant,

SAMUEL A. FOOT.

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No. XLV.—Vol. 1, p. 302.

*Agriculture.*

ADDRESS.

MR. PRESIDENT AND GENTLEMEN, Members of the St. Lawrence County Agricultural Society:—Your request, communicated through your president, to address you on this occasion, I esteem an honor, and regret that my ability to enlighten you on the great object of your association, viz., “improvement in agriculture,” is not equal to my estimate of its importance. My early years having been passed on a farm, my taste, inclination, and hope, through an active professional life, was to own and cultivate one. That hope has, at length, been realized, and I am now, and have been for several years past, the owner and cultivator of a farm—a small one, it is true, only thirty acres—yet large enough to require all my skill and care, to manage and cultivate thoroughly and properly. Under these circumstances, and with only these



advantages, you will not expect from me any great amount of instruction or practical information on the business of your lives—a business to which you have devoted your mental and bodily energies. Such as I can give, however, will be freely imparted.

Agriculture is generally viewed in one of two aspects, either as an employment of surpassing dignity, or of humble, toilsome labor. On occasions like the present, the former view is generally taken of it, and names distinguished in ancient and modern history, for services in the field and cabinet, or for high attainments in science, and who have devoted some portion of their time and talents to agriculture, are presented as examples of eminent men who, in the midst of their greatness, have been cultivators of the ground. Every true-minded and true-hearted man, whatever may be his pursuits or acquirements, must love the cultivation of the earth. She is our mother. All men, in all conditions, acknowledge her as such. In the early settlement of our country, a noble and eloquent Indian chief, at a council held for making a treaty, was invited by our commissioners to take an elevated seat which had been prepared for him. He refused, and seated himself on the ground, saying, “The sun is my father, the earth my mother; I will rest on her bosom.” The earth is indeed our mother. Of her dust are we made. She nourishes and sustains us. Her products give us food and raiment. If she withholds them, even for a season, famine threatens; and if she but limits her bounty, we are disturbed and complain. The example of honored names is not needed to draw us toward the cultivation of the soil. Our own hearts, if right, impel us in that direction. Neither power, nor wealth, nor pleasure can subdue our admiration of the well-tilled field, or restrain our delight, when looking on the rich profusion of the teeming earth, or eradicate from our bosoms the love we have to work the ground.

I will not attempt to entertain you with vivid descriptions of the nobleness of agricultural pursuits; nor, on the other hand, will I disturb you by portraying in repulsive lights the wearisome toil with which the earth must be tilled. My design is to look at and speak of farming in its true light, as it really is, a business yielding profit, and, in its prosecution, giving pleasure and requiring labor. Like all other pursuits, it has its dark and bright side. He is a visionary who regards the cultivation of the

earth as one continued and uninterrupted flow of joy and peace; and he is an equally mistaken croaker who considers it an implacable exactor of labor and toil, unmixed with enjoyment.

Let us compare it briefly, in this respect, with other occupations. To enable us to do so justly, and not charge farming with the faults of the farmer, we must not look at it as pursued by a shiftless man, who is always behindhand with his work, and never has the satisfaction of doing anything rightly and at the right time—who neglects his fences, and, consequently, is often annoyed, when he goes out in the morning, by seeing his own or his neighbor's horses and cattle in the fields where his crops are—who is always in debt and worried by duns, and who, in short, is always "under the weather," and driven by his business—nor by a man who is so unfortunate as to have an idle, careless, and slovenly wife—who lets the milk sour, because the pans are not properly washed and aired—and the butter become rancid, because not thoroughly worked—who neither keeps herself nor her children tidy, and wastes, instead of taking care of and making the most of, what her husband brings into the house. A farmer with such a helpmate, or rather, I should say, with such an incumbrance, cannot hope for much enjoyment. To make a fair comparison between farming and other pursuits, in respect to the pleasure they afford, we must view it as pursued by a man who arranges his affairs so as to command his business, and not be driven by it—who ploughs, plants, and sows at the right time—who hoes his corn and hills his potatoes when they require it—who cuts his grass when ready for the scythe, and harvests his grain when ripe—who contracts no debts which he cannot pay when due, and always has a little ready money on hand to hire a day's work when he wants it, and buy, at a fair bargain, anything he may happen to need—who has an industrious, careful wife, to make the most of what he provides, and give him a clean, orderly, comfortable house to enter when he comes in from the field. Such a man, I think you will agree with me, is a fair specimen of the generality of our farmers.

Now, follow him from day to day, and from year to year; enter into his thoughts and feelings; go with him in the morning into the field, return with him at noon, sit down at his table, and partake of his plain but abundant and wholesome dinner;

go back to the field with him, and return in his company at night; hear him when he speaks to his wife or children; see him in his plain but respectable dress, when he goes away from home on business; look at him, his wife, and children, when they enter their comfortable wagon on Sabbath morning to go to church; accompany him when, after church and their Sunday meal, he walks with his wife, and, followed by some of their children over his fields, looks at his crops and his cattle, and listen to his words; and if God has touched his heart by the power of His Spirit, and renewed him in His own image, share, if you have a kindred spirit and can, the sweet, holy, subdued joy with which his grateful heart swells, as he contemplates the bounties, and recounts in thought, and perhaps expresses in words, the blessings of his heavenly Father.

He has his days of disappointment, his seasons of adversity, and is by no means exempt from the ills of life. Of these he must bear his allotted portion.

No one claims, I believe, that mercantile or mechanical pursuits afford the enjoyment which the cultivation of the earth does. They are prosecuted with various views, mainly, however, to obtain a livelihood and acquire wealth. These are commendable objects, and some of the best heads and hearts of our country are found among our merchants and mechanics. But there is one fact which shows that agriculture is the favorite of the three. The merchant will leave his traffic, and the mechanic his labor, and go to the cultivation of a farm, when his circumstances will allow him his choice.

The learned professions of medicine and law are the usual competitors of agriculture, and they are generally regarded as affording a higher grade of enjoyment than farming, inasmuch as intellectual gratification surpasses that of sense. The advocates of these professions say, true, the farm may please the eye, the ear, indeed all the senses, but that is a pleasure far inferior to the pure and elevated enjoyment which the mind furnishes by its bold, ceaseless, lofty, successful circuits in the fields of thought and knowledge. The pleasures of the mind, undoubtedly, have a keenness, a fullness, an absorbing, overwhelming power, which those of the senses do not possess, and intellectual pursuits give the greatest amount of them.

But is agriculture necessarily excluded from the list of learned and intellectual occupations? Is a man a poorer farmer for being educated? Is knowledge less power on the farm than at the bar, or in the medical college, lecture-room, and consultation upon a patient? I apprehend not. On the contrary, I affirm that the more a man knows, the better farmer he is; and further, that there is no knowledge which may not be beneficially used on a farm. Some kinds of knowledge, of course, are more pertinent and useful than others. For instance, chemistry and botany are more useful than medicine and law. But is a knowledge of medicine of no use on a farm? When anything is the matter with my horses or cows, I am obliged to study out their cases in my agricultural books, and apply the best remedy in my power, or send for a farrier or cow-leech. The former takes time, and the latter takes money, and I have often wished that I understood diseases and medicine better than I do. Now, how is it with you, brother farmers? Are you any better off in this respect? and would not a knowledge of diseases and medicine not only be convenient but highly useful?

You may think, perhaps, that it would do very well to be acquainted with diseases and medicine, but may ask, of what earthly use can it be to a farmer to have a knowledge of law?

Allow me to answer—of very great use, and importance too; and no young man should consider himself qualified to commence life as a farmer until he is pretty well acquainted with the laws of his country. Besides the satisfaction and security he will derive from knowing his own and his neighbor's rights, an acquaintance with the principles and rules of law will greatly aid him in the transaction of his business. A farmer is obliged to make many contracts in the course of the year, and concerning a variety of subjects. He should know how to draw them; also the true construction and effect of them after they are drawn.

There is, however, a higher and stronger reason why he should have a knowledge of the laws under which he lives. Our government is one of laws, and the people make them. Agriculture is the leading and controlling interest of the country; and no class of the community—no, not even all the other classes together—have so deep a concern in the laws and government of the country, as the farmers. They ought to understand them, so as not only to

be able to select the right men for legislators and other official stations, but to fill those stations themselves. Were our farmers better instructed in the constitution and laws of the state and general government, there would be more of them in congress and the Legislature, and the legislation of the country thereby improved. Will you not, then, concur in the proposition, that a knowledge of law is both useful and important to a farmer?

It is obvious to all, that chemistry, which develops the nature of soils, manures, and the food of cereal and other plants—that botany, which discloses to us the nature and use of plants—that geology, which acquaints us with the structure of the earth—that mineralogy, which opens to us its hidden treasures—that zoology, which instructs us in the nature and characteristics of animals—that entomology, which acquaints us with the nature and habits of insects—that natural philosophy, embracing in its wide range a knowledge of the heavenly bodies, the winds, the rains, the laws of heat and cold—are all useful and important to the farmer, and may be studied, at least the elements and main features of them, by him to advantage.

The conclusion seems to be that the farmer, educated and studious as he should be, has his full share of purely intellectual enjoyment.

He possesses, moreover, and he alone, a source of pleasure still higher and purer than mere intellectual gratification. He is in constant communion with the works of our beneficent Creator; and if his mind is expanded and enriched by varied knowledge, and especially if his heart has been changed by divine influence, and received the impress of holiness, there will flow in upon his soul a full, deep, wide current of pure delight, whenever he views the many and various objects created for his use and enjoyment, and his bosom swells with grateful emotions to the Giver of them all.

May we not, therefore, on the whole, adopt the proposition, that agriculture surpasses all other occupations, in the degree and variety of gratification which it affords.

As men are generally intent on gain and the acquisition of wealth, we do little for the great interest of our country by simply showing the superior gratification which its prosecution affords.



To do it real service, we must show its pursuit to be a *profitable* business; and such, in truth, it is.

The assertion that agriculture is a profitable business will probably strike many as not only incorrect, but extravagant; and yet there is, in fact, more money made by it than by all other pursuits united. The statistics of the nation show this; and if any one will look at the tables, and see the amount of only two articles, viz., wheat and corn, raised yearly in this state, and estimate the quantity sold by the farmers for home and foreign consumption, he will be satisfied of the truth of the remark, that there is more money made by farming than by all other business. It is true that farmers do not make such large fortunes, nor so quickly, as merchants, manufacturers, and bankers; but what the earnings of agriculture lack in extent and rapidity, they make up in certainty. A man who thirsts after riches, and makes haste to obtain them, will not be likely to choose agriculture as his occupation; but his destiny will probably be that declared by the wise man of him who "hasteth to be rich," viz., "poverty shall come upon him."

It has been ascertained by a series of recorded observations, that only one young man in six, of those who engage in mercantile and kindred pursuits, succeeds. Of this one-sixth, many suspend payment, fail, and start again; but the five hopelessly fail, sooner or later, and abandon the business. This is owing mainly to fluctuations in trade, and the hazardous character of mercantile and manufacturing operations. In agriculture there is comparatively no hazard. There are, to be sure, fluctuations in the prices of agricultural products; droughts sometimes lessen the crops; insects occasionally injure the grain; unfavorable weather impedes the harvest; accidents happen to cattle and horses, and disease sometimes destroys them; but these unpropitious events hardly ever extend beyond raising a question, whether the farmer is to make more or less in the given year. They are seldom, if ever, so injurious as to produce an actual loss on the year's business.

The farmer has always a market for what he has to sell. His goods are never out of fashion, nor his articles superseded by those of improved model and construction. He is never saddled with a stock which is out of date and worthless. There are

always purchasers for all he can spare, and at fair prices. There is a reason for this, not applicable to any pursuit except agriculture. The whole human family are fed and clothed by the products of the earth. They must live, and to sustain life must have food and raiment.

Furthermore, agriculture is the nursing mother of commerce and manufactures. The merchant trades in her products, and the manufacturer converts them into articles for use. Ships would be unfreighted, warehouses remain empty, manufactories be closed, if the earth did not yield her increase. Agriculture supplies materials for all other occupations and business, and hence there is an unfailing market for her products. This enables the farmer to obtain moderate but sure annual gains, and these, after all, generally make the largest fortune in the end. If a merchant, manufacturer, or banker would apply the same amount of capital, talent, enterprise, and industry to agriculture that he does to the business he pursues, it is very questionable whether he would not make more money, and die a richer man. But let twelve young men start in life, each having the same amount of capital, and equal capacity for business; let six become agriculturists, and the other six engage in any other pursuits they choose; there is no doubt that the six agriculturists will own together, at the end of life, by far the greatest amount of property.

There is no business which will give a better profit on a small capital than farming. This remark is founded on my own experience and observation. It would occupy too much time to give the details necessary to prove this. But let any farmer receive and expend on his farm from five hundred to a thousand dollars, in draining his wet lands, buying manures, improving his stock, and the like, and keep an account of the increased receipts by reason of that expenditure, and he will find his outlay returned, or, in other words, his capital doubled, far sooner than any merchant, manufacturer, or banker will find his in a like happy condition.

When, however, we form a sober, conscientious, and accountable judgment in respect to the acquisition of wealth, and the amount we ought to strive to obtain, agriculture will be found to be altogether the preferable pursuit.

First, in regard to its acquisition. Observation shows us that

riches, suddenly acquired, are generally a curse, and scarcely ever prove a blessing. To render them a blessing they must be gradually obtained, and be the proceeds of honest industry and enterprise. The happiest condition of life, in this country, is that in which a husband and wife, with hearts united, are, by their joint exertions, steadily but gradually increasing their property, extending their usefulness, and rising in the estimation of the community. Steady acquisition, though moderate, is incomparably more desirable than sudden riches.

Second, as to the amount of wealth a wise man will seek to obtain.

Again, observation shows us clearly that riches, left to children in this country by wealthy parents, oftener prove a curse than a blessing. If a man acts wisely, he will bring up his children in habits of industry, frugality, and sobriety; give them a good education, a thorough knowledge of some useful trade or occupation, and then let them take care of themselves. All a man acquires beyond what he needs to educate and prepare his children for business, and furnish a comfortable support for himself and wife in old age, is an injury instead of a benefit.

These views in respect to the manner of acquiring wealth, and the amount which ought to be sought, being received as true, it is manifest that agriculture is far better fitted to carry them out than any other occupation. It will give us all we ought to have of riches, and lead into the right way of obtaining them.

Although agriculture may not be an occupation by which an immense fortune may be amassed, or wealth suddenly acquired, yet her rewards are sure and abundant, and distributed with a more equal hand; and it is no error or extravagance to assert that farming is a profitable business.

Allow me now to make some suggestions, the object of which is to render farming both pleasant and profitable. One of the great errors of the farmers of this country consists in attempting to cultivate too much land. This error produces two injurious results, viz., a diminution of pleasure and loss of profits. If a man's head and heart are right, he will love neatness and order, and derive great enjoyment from the practice of them. Order, we know, is the first law of nature. The love and practice of it are, next to well-established religious principles, the best defence

against irregularity of life. If a farmer would be contented and happy himself, if he would make his family so, and especially if he would have those whom he employs satisfied with their situation, he must be orderly, not only in his house, but in the management and conduct of his farm. So deeply seated in the human heart is the love of order, that none are so low as not to feel its influence and enjoy its presence. Neatness, too, is a kindred virtue, and produces like effects, though in a less degree. There is no home sweeter, no residence more inviting to inmates or visitors, than a farmer's establishment, arranged and conducted with order and neatness. When a man undertakes to cultivate more land than he can attend to well, he will be constantly driven, and, of course, neglect what is least pressing. His fences will not be repaired, or, if they are, will be slightly done, and those not needed to confine his cattle, entirely neglected. His gates will be off their hinges, and propped up with pieces of old boards and chunks of wood. The Canada thistles will be allowed to go to seed in the road adjoining his fields, and in the fields themselves. The manure will be left in the barn-yard. Boards will be off of his barn and cow-houses. His hogs will range about unwrung, root up the turf in the street, in his door-yard, and, very likely, in his meadows and pastures. Broken panes of glass in his house, instead of being replaced by whole ones, will have their places supplied by old hats, old garments, and perhaps pillows. The drains around his house will be out of repair—the roof leak, and when a shower comes, all will be obliged to run with pails, pans, and bowls to catch the water, and prevent the house from being flooded. There can be no enjoyment, certainly none of the right kind, on a farm so conducted. But if a farm is no larger than the owner can conveniently and thoroughly manage, he will be able to attend to all these minor matters. His fields, his house, indeed his whole establishment, will be trim, tidy, and inviting. He, his household, and his guests, will enjoy the order and neatness which prevail on every side. There is something of life to live on a farm so managed.

The more serious injury, however, resulting from an attempt to cultivate too much land, consists in the loss of profits. On this topic I could speak from personal knowledge, and would do so, and give the data, were it not for the apprehension that my

statements might appear boastful. But I will make one general statement, and have no doubt that every farmer present, who thoroughly tills his land, will concur in it; and that is, that the difference in produce between an ordinarily and a well-cultivated farm is about one-half, while the expense of the additional cultivation does not exceed one-half of the value of the increased produce thereby obtained. For instance, sow ten acres of land with wheat; it will give, with ordinary cultivation, say eighteen bushels per acre. Cultivate it thoroughly, and it will give double the quantity, viz., thirty-six bushels per acre. The additional labor and expense necessary to obtain the additional eighteen bushels will not exceed the value of nine of these bushels, and, of course, the other nine will be clear profit, and in addition to the ordinary profit obtained on the first eighteen bushels. This is true, also, in regard to all other products of agriculture, and extends even to the raising of stock. If a calf is well fed, well wintered, and thus treated and cared for till three years old, it will be worth, say thirty-five or forty dollars; whereas, if neglected, unhoused in winter, and poorly fed, it will be a lean, miserable creature, worth, probably, some fifteen or twenty dollars. Now, the increased expense of raising the animal, so as to be worth thirty-five dollars, is not more than half the difference between the value of the two, leaving the other half as clear gain.

A farm thoroughly cultivated, moreover, is constantly improving in value, and this enhanced value will go far towards meeting the increased expense of thorough cultivation.

On the whole, nothing is plainer than that a man who undertakes to manage a farm larger than he can thoroughly till, never can obtain the advantages of good cultivation. He may run over a great many acres, but will really cultivate none. He may gratify a common but exceedingly unwise ambition, of adding acre to acre, and of overlooking a large tract of land he can call his own, but his profits will be very small, and when the interest of the money paid for his land is deducted, the two ends of the year will scarcely meet. His farm, besides, instead of increasing in value, will hardly hold its own.

In conclusion, upon this topic, we may, without hesitation, adopt the proposition, that a moderately sized farm, well culti-



vated, is more profitable than a large one, cultivated in the ordinary way.

If, then, a man would be prosperous and happy on a farm, he must not have one so large that he cannot cultivate it thoroughly.

There is another matter, too little considered by agriculturists generally, but which has a strong bearing on the pleasure and profit of farming. It is well expressed by the common phrase, "Having everything handy"—in other words, so locating and arranging the dwelling, the barns and outhouses, and so dividing and arranging the fields, as to save time, labor, and steps in conducting the business of the farm. To illustrate: on some farms, there are only one or two places at which cattle can always find water, and on few, if any, on which they can find it in every lot. Hence, more or less time must be taken in driving cattle to and from water. In dividing a farm into lots, care should be taken to arrange them so as to render the water accessible to cattle, without labor or trouble. One good method of doing this, is to arrange the lots so as to bring the water within a lane, and have every lot, or a large number of lots, open into it. Then, by closing the entrances into all the lots, except the one in which the cattle for the time are pastured, water, in effect, is introduced into every lot, cattle drink when they please, and no time is lost in watering them. Locate the wagon-house, or shed, under which the wagons, ploughs, harrows, &c., are housed when not in use, where the laborer will naturally bring them when he comes in from the field. Also, locate the tool-room at a place where the workmen can conveniently deposit their tools at night and take them in the morning; and so on throughout the whole establishment, and save a step wherever it can be done.

Lest you may think this a small matter, let me give you a few data for calculation. Ascertain, first, how many steps a man engaged on his farm takes in a day; then, the value of a day's work. Next, ascertain the number of steps saved each day by the best arrangement of the kind mentioned; then, how many altogether in one year; divide them by the number of steps a man takes in a day, and find the number of days' work saved in a year; complete the calculation, and you will be surprised to find in how few years the value of your farm will be saved in this way.

Besides this great saving, there will be no small amount of gratification constantly arising from the greater ease and promptness with which everything will be done.

Many farmers lose a great deal of time, and no small amount of money, by not having a good system for using and preserving their implements. A fair outfit of farming utensils, for working a farm of ordinary size, costs considerable; and it makes a great difference in the general result, whether they must be renewed every five or ten years. The expense, too, of keeping them in repair is no small item, and the amount of this expense depends materially on the care taken of them. A great deal of time and labor is saved by knowing where an implement is, and by its being in a convenient place to get when it is wanted for use. You will say, perhaps, "we know all this very well." No doubt you do. But, do you practice upon it? Has no one, in this assembly of farmers, left his sleigh standing out on the ground this summer, exposed to the sun and rain, and the shoes to rust? Has no one left his harrow in the field where he last used it, and not even turned it up against the fence, but left the teeth in the ground to rust? Have none of you left your ploughs out, and in the ground, where the iron will rust and the woodwork crack and split with alternate sun and rain? Is your wagon under cover, or is it out exposed to the weather? Do you know where your hoes, rakes, and forks are, and if you do, are they in your tool-room? If you can answer all these, and like questions, satisfactorily, you are a happy and prosperous set of farmers. If you cannot, allow me to state a few things for your consideration.

If a farmer has a wagon-house and tool-room, and when he has done using an implement, will bring it in, and put it in its proper place and under cover, his implements will last twice as long, the expense of repairs upon them be materially diminished, probably one-half, and a large amount of time and labor saved, in looking for and going after tools when wanted. If any one will take the trouble to make an estimate of the pecuniary benefit the owner of a farm of ordinary size will derive from pursuing the method above suggested, he will find that it will nearly equal, and in some instances exceed, the expense of a hired man.

There is one thing more in respect to implements which I will venture to mention, because it is so useful in practice, and

that is, if an implement is so out of repair that it cannot be used without reparation, it should be repaired at once. We should not wait until it is wanted for use; for if we do, our work, however urgent, must stand until it is mended. We may be obliged to go ourselves, or send a man with it to the mechanic at a very inconvenient time. The mechanic, too, may be absent or engaged, and thus we may be subject to considerable inconvenience and loss. The pecuniary benefit arising from a good system in respect to farming utensils, is by no means, however, the only advantage resulting from it. Scarcely anything on a farm is more vexatious than not to be able to find a tool when it is wanted; next to that, however, is having it out of repair, and being obliged to send it away to be mended, at the very moment when it is wanted for use. If a farmer would enjoy the delightful serenity of a good temper, and derive pleasure from his occupation, he must keep his implements in good order, and in the right place.

I will call your attention to one more topic, and that is the garden.

The generality of farmers in this state can scarcely be said to have a garden. They have a small spot of ground they call a garden, but in most cases it produces more weeds than vegetables. You will probably not believe the statement that a garden, 150 feet long and 100 feet wide, will produce more wholesome food than can be obtained from ten acres of land well cultivated, and planted or sowed with any of the cereal grains, as wheat, rye, corn, &c.; and yet it is true. An asparagus bed, 40 feet long and 30 feet wide, will give more good food every spring, and go farther to support a family, than a barrel of pork; while the cost of making it, in the first instance, will not exceed that of raising and fattening the pork; and the labor required in the fall to prepare it for winter, and in the spring to prepare it for production, will not exceed the value of twenty pounds of pork; and the bed, when rightly made, if properly taken care of, will last a life-time. A garden of the size mentioned will supply a family of twenty with all the vegetables they can consume, and with a small portion of meat, feed them comfortably. Vegetables, also, are more wholesome than meats. Every farmer makes a great mistake, in point of profit, who fails to have a good garden; and if he looks

to comfort, health, and enjoyment, he will certainly have one; for a house in the country without a garden, is indeed forlorn.

My parting wish is, that you may all have good gardens, well cultivated farms, and happy homes.

SAMUEL A. FOOT.

GENEVA, *September 4, 1855.*

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*Joining the Republican Party.*

*Reasons for Joining the Republican Party, and accepting a  
Nomination for the Assembly.*

GENEVA, *October 24th, 1855.*

W. W. WATSON, A. J. SHANNON, and JAMES LANE, Esqrs.

GENTLEMEN: I had the honor, on the 20th instant, of receiving your letter informing me of my nomination on that day as the republican candidate for member of assembly for the eastern district of this county, and have concluded to accept it, which I freely do.

This honor was unsolicited, and I return my thanks to the convention for it.

In view of the present condition of political parties in our state and country, and of my former political associations, I deem it due to myself, and to my personal and political friends, to state, as briefly as I can, the principal reasons which have induced me to accept your nomination, and place myself on the republican platform.

Every well-informed man in the country knows that the principles of national and state policy which led to the formation of the whig party some eighteen years ago, and constituted the dividing lines between it and the democratic party, no longer form issues between them, and that those parties, in fact, no longer exist as formerly organized. The establishment of the sub-treasury, and acquiescence in it, have settled all questions respecting the safe-keeping and management of the national

finances. The distribution of the proceeds of the public lands among the several states is given up, and no longer even discussed. The improvement of our national rivers and harbors by the General Government is admitted to be constitutional and proper by a large majority of the old democratic party, and they have united with the whigs in Congress on several occasions in passing laws for that purpose. The protection of our domestic manufactures by a discriminating tariff has been virtually abandoned—in part because deemed hopeless, and in part because many of our manufacturing interests have become so well established as not to require protection. The issue which arose in 1844 between these parties respecting the admission of Texas into the Union, and which involved the principle of extending slavery over free territory, and on which the Presidential election of that year mainly turned, has likewise ceased to be an issue between them, as they were then organized. For at the session of Congress following the Presidential canvass, whigs in Congress from the slave states joined with democrats in admitting Texas into the Union with slavery engrafted on her constitution; thereby introducing slavery into a large territory, which was free before it was wrested by lawless violence from Mexico by slavery propagandists, and by that act abandoned the whig principle, not to allow slavery to be established on free soil. In the contest of 1850 between slavery and freedom, respecting the free territory acquired by conquest and purchase from Mexico, the whole whig party in the slave states, with very few, if any, exceptions, took ground with slavery against admitting California with freedom, and in favor of allowing slavery in the territories of New Mexico and Utah; and at the close of the contest went for the Compromise of that year, by which a large portion of the old province of New Mexico was added to Texas, and in that way an extensive region of beautiful country, dedicated to freedom, was brought under the thralldom of slavery; and finally, last year, when plighted faith was to be violated, and Kansas and Nebraska opened to slavery, the whigs from the slave states, with a few honorable exceptions, supported, in one solid phalanx, the iniquitous measure allowing slavery to be introduced into an immense region of fertile land which, thirty-five years ago, was devoted to freedom by the most solemn sanctions; and thereby



violated, in the most objectionable manner, the whig principle of excluding slavery from free soil.

This review of events shows that of all the old national issues between the whig and democratic parties, only one remains, and that is the exclusion of slavery from free soil; and even on that the old whig party have separated, the portion belonging to the slave states taking the lead in the separation.

In respect to state policy, only one issue was ever made between the whigs and democrats, and that regarded our internal improvements. On that subject there is no longer a real difference. All parties have united in amending the constitution, so that our enlarged canal may be completed at the earliest practicable period.

What, then, is there left of public duty to which the old whig party stands pledged? I see nothing except the principle for which we so earnestly contended in 1844—viz., the exclusion of slavery from free soil. A whig party continued or revived to accomplish any other object but this, belies its name. Why then adhere to a name which is no longer appropriate? Is it not more sensible, liberal, and patriotic to meet our democratic fellow-citizens, who agree with us in opinion, on a common ground, and take a name indicative of our principles and objects?

The old democratic party, at least what there is left of it in this state, and which has the distinctive name of "Hards," is true to the only old issue left, and upholds the repeal of the Missouri Compromise, and consents to the introduction of slavery into Kansas and Nebraska. The great body, however, of the old democratic party, especially in this state, began to look at slavery through a different medium after Mr. Van Buren was deprived of a nomination for the Presidency at the Democratic convention in 1844 by pro-slavery democrats, because he had taken manly and patriotic ground against the admission of Texas with slavery into the Union; and now a large majority of that party, probably three-fifths, perhaps more, are against the extension of slavery, and condemn the repeal of the Missouri Compromise. Those who are earnest and zealous on that subject have in general separated from the organizations of the two sections of that party in this state, "Hards" and "Softs," united with the

whigs and formed a republican party, which will be loyal to the Union, and sustain the principles set forth in the Declaration of Independence, and secured by the Constitution of our General Government; prominent among them is the exclusion of slavery from free soil, and from all territories and places under the exclusive jurisdiction of the United States.

I am free to say that this course meets my entire approbation, and the more so because it carries out opinions and principles in respect to slavery entertained unanimously by our forefathers north and south, and embodied by them in the Declaration of Independence and the Constitution of the United States.

All acquainted with the history of our country know that the founders of our institutions concurred in the opinion that "*slavery was a great political and moral evil*," and confidently expected its early extinction. As the Constitution was made for all time, the framers of it would not allow the words "*slave*" or "*slavery*" to be introduced into it, although it was necessary to incorporate provisions in it respecting slavery. They considered the institution of slavery so inconsistent with the Republican Government which they were establishing, that they would not permit its fair features to be marred by even the name, and on the motion of a delegate from a slave state, the word was excluded from the Constitution. How differently now do our fellow-citizens of the slave states, at least a large majority of them, think of slavery! They now deny it to be an evil, affirm it to be a blessing, attempt to justify it by divine as well as human law, and several of the more northern slave states do not hesitate, avowedly, to breed and raise slaves, male and female, for a southern and distant market. Did our fellow-citizens of the slave states confine their preferences to their own states, and not attempt to spread them over free territory, or press them upon their fellow-citizens of the free states, there would be little or no complaint. But within the last twelve or fifteen years a spirit of propagandism has taken possession of our slaveholding fellow-citizens. They have succeeded in pushing their favorite institution into Texas, first, by violence against a peaceful neighbor, and second, by bold, persevering and skillful management at home. They drew the country into a war with Mexico to obtain a wider space for slavery, but as yet have gotten by that only

a part, though a valuable part, of Mexico. As a part consideration, however, for withholding for the present direct efforts to press slavery into our territories of New Mexico and Utah, they obtained a law compelling freemen, independent citizens of the free states, to assist them in catching their runaway slaves, at the peril of fine and imprisonment for refusing. They agreed that the Compromise of 1850 should end forever all agitation of the slavery controversy, and the free states reluctantly acquiesced in it. But no sooner was their acquiescence secured than new projects were set on foot to extend and strengthen slavery. An able and influential journal published at Charleston, South Carolina, advocated, in a series of well-written articles, a revival of the atrocious and horrible African slave trade, and was not rebuked, so far as I observed, by a single journal in the slave states. In a convention held (if my memory serves me) in Louisiana, called to advance Southern interests, and composed of delegates from slave states, a proposition to renew that inhuman traffic was introduced and seriously debated. Repeated plots and lawless attempts have been made to seize Cuba with all her slaves, with a view to annex her to the Union. The hope is entertained and often avowed of adding the whole of Mexico to our Union, and spreading slavery over her fertile plains. The supporters and advocates of slavery have frequently, within the last few years, boasted that ere long slaveholders would call the roll of their slaves at the foot of the monument on Bunker Hill. But the act which surpasses all the others, in bold effrontery and bald wickedness, is the late repeal of the Missouri Compromise. The fact that the slave power used a number of senators and representatives from the free states as agents to introduce and carry the measure through Congress, aggravates instead of justifying or even palliating the transaction; for it shows that this power is so potent for evil, that it can induce gentlemen high in the confidence of their fellow-citizens to betray their trusts and misrepresent their constituents. This measure is not only an unmitigated breach of plighted faith, which has disgraced the American name, but an act of gross injustice to the free states. No wonder it has roused their indignation. Slavery is preparing to make, and has already commenced, one more aggression on the rights of the free states exceedingly offensive to the feelings of freemen. It is

a principle of the common law of England, and one which has been adopted by all the free states of our Union, that there can be no slavery on freedom's soil—that as soon as a slave steps within the boundary lines of a free state, and sets his foot on free soil, he becomes a free man. This principle is qualified by our Federal Constitution, and a slave is still held in slavery, though within a free state, *provided* he is a fugitive from a slave state of our Union. Hence the rule in our free states is, that if a slave comes into them from a slave state, with the assent of his owner, he is no fugitive, and consequently free. The judges of the Supreme Court of the United States, so far as they have expressed any opinions on the subject at the circuits, have affirmed this principle. But the Supreme Court itself has not yet directly passed upon it, the question not having been presented to that tribunal. In the hope of obtaining a decision from that court, that an owner of slaves may carry them through a free state without their becoming free, the state of Virginia has carried up to it, for review and reversal, the decision of the late Judge Paine, of the Superior Court of New York, made a few years since, giving freedom to a family of slaves whom a citizen of Virginia was carrying through this state to put on board a vessel at New York to send south. Within a few days past, a district judge of the United States at Philadelphia has given an opinion that a slaveholder may carry his slaves through a free state without losing his right to hold them in slavery. Should the slave power succeed in establishing this principle in its favor, then any slaveholder may drive a chain-gang of slaves from Maryland or Virginia, through Pennsylvania and New Jersey, to the city of New York, or on through our state, Connecticut, Rhode Island and Massachusetts, to Boston, and there ship them to a southern port; and so, too, may a slaveholder drive a like gang from Kentucky or Missouri, through Illinois, Indiana, Ohio, Pennsylvania, and our state, to the city of New York; or on through our state and Massachusetts to Boston, or any other eastern port, and there ship them south. When a right to do this is once established, it is no stretch of the imagination to suppose that some bold and impudent slave-driver, to flout our New England brethren, may drive his gang of slaves up on to Bunker Hill, and there, beside the monument erected to freedom's cause, call the

roll of his manacled band, and thus accomplish the pro-slavery boast far sooner than any friend of freedom has apprehended.

This spirit of propagandism, so restless, energetic, and lawless, and these aggressive acts, especially the deep wrong of repealing the Missouri Compromise, and pushing slavery by force and fraud into Kansas against the wishes of a large majority of her citizens, have forced upon the country the solemn issue whether this nation shall become a great slaveholding republic. This issue must be determined, and finally settled; and I am satisfied that there will be no end to slavery agitation until the friends of freedom unite and determine that slavery shall be confined to the states in which it now exists.

It is said that this is impossible, because if a state is admitted into the Union as free, she may afterwards alter her constitution, introduce slavery, and still maintain her position in the Union. This is a mistake. The provision of the Constitution is: "New states may be admitted by the Congress into this Union." If Congress may admit a new state, it, of course, may refuse to admit; and if it may admit or refuse, it clearly has the power to prescribe the terms or conditions on which it will admit. If a new state should be admitted on condition that it should forever exclude slavery from its borders, and should afterwards violate that condition (which is not probable, and barely possible), it would relapse into a territory. Then it would become the duty of the Senate and House of Representatives, as they are judges of the qualifications of their own members, to refuse admission to their houses of the senators and representatives from the delinquent state; and of Congress, to legislate for the state as a territory, and establish a territorial government over it. If the right of Congress so to legislate should be questioned, the constitutionality of any of the laws, passed to regulate the state as a territory, might be tested before the Supreme Court of the United States. Thus our institutions would be found adequate to meet such a contingency. All controversies arising out of it could be peacefully settled, and slavery constitutionally confined to its present limits.

I will now inquire, What has caused the great change in the opinions of our fellow-citizens of the slave states respecting slavery? What has induced them to think slavery a blessing,



when their fathers thought it a direful evil? What has led them to strive with persevering energy to perpetuate and extend slavery when their fathers desired and expected its early extinction, and confined it to its then limits, as they supposed forever, by dedicating to freedom all the territory then owned by the United States?

Other causes have operated, particularly the profitable culture of cotton; but the main cause of this change of opinion, I apprehend, is *the love of power!*

Great political power is secured by our Federal Constitution to the ownership of slavery wherever it exists in a state of our Union. The possession of this power by the slave states has enabled them to control the Government of the country, although they have always been in a minority compared with the free states. Our fellow-citizens of the slave states have held this power for years. They know its advantages, and enjoy its pleasures. It consists in this: by the Constitution, representatives in Congress are apportioned among the several states according to population, and in ascertaining the population of a slave state five slaves are counted as three free persons. By the census of 1850, the free states were found to have (leaving out fractions) a free population of 13,000,000; the slave states a like population of 6,000,000 and 3,000,000 slaves. There are 233 representatives in Congress. If these had been apportioned among the states of the Union equally according to their *free* population, the free states would have had 159 members of Congress, and the slave states 74—a difference in favor of the free states of 85 members of Congress, and of course the like number of votes for President and Vice-President of the United States. But by counting five slaves as three free persons, as the Constitution directs, and making the apportionment accordingly, as was done, the free states have 144 members and the slave states 89, making the difference in favor of the free states of only 55 members of Congress and votes for President and Vice-President, instead of 85, and producing a loss of political power and influence to the free states of 30 members of Congress and Presidential votes. This, in effect, takes from the free states 15 members of Congress and Presidential votes, being the difference between 159, to which they would be entitled on an equal apportionment, and 144, which they now have; and gives these 15 members and Presidential votes to the

slave states, being the difference between 74, to which they would be entitled on an equal apportionment, and 89, which they now have; thus producing an inequality of political power in favor of the slave states of 30 members of Congress and Presidential votes. Considering this excess of political power to be equally distributed among the voters of the slave states (which is the most favorable view of it for them, as the deprivation of it is, in fact, among the voters of the free states), then a voter in a free state is seven-eighths of a man politically, and a voter in a slave state a full man, and one-eighth more.

In the free states, every voter has the same political power, but in the slave states it is far otherwise. The congressional districts in the free states contain in general about 14,000 voters; but in those sections of the slave states where the slaves are most numerous, the number is much less. For instance, the fourth congressional district in Virginia has 7,000 voters, and the fourth congressional district in Alabama, 6,000. Hence, a freeman and a voter in Ontario County, New York, is less than half a man politically compared with a voter in the fourth district of Alabama. It takes more than two of us freemen to make *one man* there.\*

Well might Senator Seward contend, as he did the other day in his speech at Albany, that there is a privileged order in this country—a political aristocracy. But when the fact is brought to our notice, that there are only 350,000 slave-owners in all the slave states, and that the excess of political power of which I have been speaking is in reality held and wielded by them, we see that there is in our midst, not an aristocracy merely, but a powerful and dangerous oligarchy—a privileged few, who have here-

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\* This subject and the effect it produces on a freeman who has a reasonable share of self-respect, was well illustrated the other day in a conversation between two brothers, and which one of them repeated to me. These brothers are members of our bar, and distinguished for talents, acquirements, and moral worth. The elder is a Hunker, and the younger a Soft Democrat in politics. They were conversing on the subject of slavery, and the serious aspect it has assumed. In the course of the conversation, the elder brother said to the younger, "Henry, what do you care about the niggers down South?" The younger answered, "Well, I don't care much about them, but I don't want to be a nigger myself."

tofore not only controlled their own states, but the Union also.

The least that our fellow-citizens of the slave states can expect from their brethren of the free states is, the exertion of all their constitutional rights to confine this oligarchy to its present limits; indeed, our patriotic fellow-citizens of the slave states, who are not actual members of this oligarchy, should unite with us in preventing its extension, and exert themselves (for they alone have the power) to effect its ultimate extinction.

It appears to me that the proposition advanced by the supporters and apologists of the repeal of the Missouri Compromise, viz., that the inhabitants of a territory should have the right to determine whether slavery should or should not be introduced into it, and whether it should come into the Union as a free or slave state, is most unreasonable, unsound, and unjust. There would be more ground for this proposition, if the inhabitants of the territory were alone affected by the introduction of slavery into their state. But they are not. The citizens of the free states are deeply and seriously affected by it; for the admission of every new slave state into the Union increases the inequality of political power before mentioned to their injury, and adds to the danger of the slave oligarchy. The proposition, in effect, gives to the inhabitants of the territory a right to take from the free states a portion of their just and equal political power and influence, and appropriate it to themselves—an injustice so glaring as to be almost, if not quite, absurd.

Many gentlemen whom I highly respect and esteem, and with whom I have been agreeably associated politically for many years, appear to think that a party formed, among other objects, to restrain slavery within its proper limits, must necessarily be a sectional party. It seems to me this is doing injustice to our brethren in the slave states; for it assumes that every one of them is ready and willing to justify the dishonorable act of repealing the Missouri Compromise, and forcing slavery by violence and fraud into Kansas—to join in accomplishing the direful calamity of converting this nation into a great slaveholding republic—that each and all of them have lost all respect for the opinions of their fathers, of glorious memory, and no longer believe with them that slavery is a political and moral evil. For one, I can-

not do them such injustice; and I fully believe that the republican party will have many able and patriotic supporters in the slave states. But should the contrary prove true, and our Southern fellow-citizens join to a man in pushing slavery over free territory and crowding it into free states, are we not to unite in resisting them by lawful, peaceful, and constitutional means? Did our Washington, when advising against sectional parties, contemplate and intend to advise pusillanimous submission to a sectional effort to crowd slavery by dishonor, fraud, and violence into free territory? Would he have put his name to a bill to violate plighted national faith? Would he have favored the fraud and violence in Kansas? Would he have advised the free-men of the free states to become passive and silent under the deep wrong which has been done them? No, indeed! He would have been foremost in resisting, and uniting with them to resist, such dishonor and injustice.

As to any fear of a dissolution of our glorious Union by pursuing constitutional means to restrain our slave oligarchy, and keep it within its present bounds, the bare suggestion of such a fear is too preposterous to be worthy of the serious notice of a sensible man. Our Union can no more be dissolved than the continent on which it rests. The slaveholding oligarchy will be the last to attempt it. Not only does their slave property, but their very lives, depend on the security which the Union gives them.

In conclusion, I join cheerfully the republican standard. Having begun my political life a republican, I hope so to end it.

My views respecting temperance and a prohibitory law are so well known, that it is hardly necessary to allude to the subject; but to prevent all cavil, I will add, that I approve of the following resolution passed by our political friends at Syracuse:

“Whereas, certain conventions of politicians in this state have made a party issue on the law prohibiting traffic in intoxicating liquors, thus wresting its interpretation from the courts, and appealing from the expression of the popular will which dictated said law; therefore

“Resolved, That firmly believing the great principle of prohibition to be right, we will resist the attempt now being made to prevent a trial of the practical working thereof in this state.”

Respectfully, your ob't serv't.

No. XLVII.—Vol. 1, p. 311.

*Women's Rights.*

*In Assembly, March 14th, 1856.*

Mr. FOOT, from the Judiciary Committee, to which was referred the petitions of sundry citizens praying for women's rights, reports that a very large number of petitions for "women's rights" have been referred to the Committee on the Judiciary, several of which have been read, and a sufficient number to ascertain that they are all alike. The petitioners ask that there may be established by law an equality of rights between the sexes. The Judiciary Committee is composed of married and single gentlemen. The bachelors on the committee, with becoming diffidence, have left the subject pretty much to the married gentlemen. They have considered it with the aid of the light they have before them, and the experience married life has given them. Thus aided they are enabled to state, that ladies always have the best piece and choicest titbit at table. They have the best seat in the cars, carriages, and sleighs; the warmest place in winter and the coolest place in summer. They have their choice on which side of the bed they will lie, front or back. A lady's dress costs three times as much as that of a gentleman; and at the present time, with the prevailing fashion, one lady occupies three times as much space in the world as a gentleman. It has thus appeared to the married gentlemen of your committee, being a majority (the bachelors being silent for the reason mentioned, and also probably for the further reason that they are still suitors for the favors of the gentler sex), that if there is any inequality or oppression in the case, the gentlemen are the sufferers. They, however, have presented no petitions for redress, having doubtless made up their minds to yield to an inevitable destiny.

On the whole, the committee have concluded to recommend no measure, except that, as they have observed several instances in which husband and wife have both signed the same petition, in such case they would recommend the parties to apply for a law authorizing them to change dresses, so that the husband may



wear the petticoats, and the wife the breeches, and thus indicate to their neighbors and the public the true relation in which they stand to each other.

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No. XLVIII.—VOL. 1, p. 311.

*Colonization.*

FELLOW-CITIZENS:—I thank you for the honor conferred upon me by appointing me chairman of this meeting. It is the more appreciated by me, because it furnishes evidence that my fellow-citizens do not consider the platform of political principles, which I have avowed as a member of the Republican party, inconsistent with, or impairing, my long and steady advocacy and support of African colonization. There is in fact no inconsistency, but, on the contrary, entire harmony, between the object of the American and New York state colonization societies and the opinions adopted by me as a member of the Republican party. Those societies have one grand, benevolent, and Christian object in view, and that is, "To colonize, with their own consent, people of color of the United States on the coast of Africa, and through them to civilize the African tribes, and improve the colored population of our country." They do not interfere with the institution of slavery in the states where it exists; but all candid minds must admit, that the indirect effect of their operations has been to liberate thousands of slaves and colonize them as freemen on the coast of Africa, and establish there a stable, self-governing, and flourishing republic.

Individually, and as a politician and member of the republican party, I disclaim all right to interfere with the institution of slavery in the several states where it exists. My heart beats as warmly, my attachment is as ardent and sincere, and my respect as high for my fellow-citizens of the slave as of the free states. No exertion or sacrifice would be more freely made by me to defend and support the constitutional and legal rights of the free than of the slave states; yet am I resolved, that so far as my

voice and vote will avail, slavery shall never extend beyond its present limits; shall be excluded entirely from the territories of the United States and all places under its exclusive jurisdiction. Another slave state shall never be admitted into our glorious Union; and on the momentous issue now before the country, whether this nation shall become a great slaveholding republic or not, the path of duty in opposition to so direful an event is to me so plain, that I must follow it, let the consequences be what they may. I anticipate none, however, except blessings to our own beloved country. The colonization scheme is regarded by me as the only practical solution of the disturbing, difficult national problem of domestic slavery; and I trust the time is not far distant when all American hearts, North and South, will unite earnestly in the work—*first*, of preparing, by intellectual, moral, and religious culture, the colored population of the United States, bond and free, for self-government; and *second*, of transporting them to the Republic of Liberia, and under its constitution and laws, establishing on the western coast of Africa a powerful, enlightened, Christian nation.

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No. XLIX.—VOL 1, p. 325.

*Slavery.*

The joint committee of the senate and assembly appointed to consider and report what measures, if any, the Legislature of this state ought to adopt to protect the constitutional rights of her citizens against the serious and alarming doctrines of the Supreme Court of the United States in the decision of the case of Dred Scott, respectfully report: That they entered upon the discharge of their duty under a deep sense of the importance of the subject committed to their consideration. They could not fail to see, that the sovereignty of our state, the constitutional rights of her citizens, the protection of her free labor, her great commercial, manufacturing, and agricultural interests, her extensive educational system, and the morals of her citizens, were all assailed

and put in jeopardy by the unconstitutional, sectional, and pro-slavery doctrines announced by the majority of the judges of the Supreme Court of the United States in the decision of the case mentioned ; for those doctrines will bring slavery within our borders, against our will, with all its unhallowed, demoralizing, and blighting influences.

Your committee have not been able to obtain authenticated copies of the opinions of the five pro-slavery judges, who formed a majority of the Court, and proclaimed the unconstitutional doctrines which have so justly alarmed the people of this state. They have, however, abundant evidence of their contents, and of the principles they announce.

There was only one question before the Court for adjudication, and that was, whether Dred Scott was a citizen of the United States. No judge of the Court had a right, and far less was it his duty, to discuss, decide, or even express an opinion on any other question or subject. Not only judicial decorum, but numerous decisions of that very Court, forbade him to express opinions on any question besides the one directly before him. Yet the five pro-slavery judges, disregarding official decorum and established precedents, after deciding the case before them, proceeded to discuss and express opinions on five other constitutional questions of vital importance to the free states of this Union.

*First.* They express the opinion that if a master brings his slave into a free state for a temporary sojourn, the slave does not become free. This is in direct contradiction to a cherished principle of the common law, that when a slave places his foot on free soil, he becomes a freeman—a principle dear to the heart of every enlightened citizen of the free states of our Union ; and a principle which has been recognized by the courts of all those states, by the courts of most of the slave states, and by the Supreme Court of the United States itself.

*Second.* They express the opinion that the Ordinance of 1787—the Magna Charta of freedom in all the states formed out of the territory northwest of the Ohio—is inoperative and void—an opinion which astonishes the intelligence of the country, and is in direct opposition to the action of the general and state governments from their institution.

*Third.* They declare that the act of Congress admitting the

state of Missouri into the Union, known as the Missouri Compromise, was unconstitutional and void; and thereby give the sanction of their names and of the Court to the unmitigated breach of plighted national faith, accomplished by the repeal of that act.

*Fourth.* They discuss and express the opinion, that the clause in the Constitution of the United States, which declares that "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States," only applies to the territory which belonged to the United States when the Constitution was adopted, and confers no authority on Congress to pass laws regulating the territories acquired since; and thus they deny to Congress the power to exclude slavery from them, or to authorize a territorial government to exclude it; while every well-informed person in the country knows, that every territory which the United States has acquired since the adoption of the Constitution has been governed by the laws of Congress. The power of Congress over those territories, and the authority to prohibit slavery in them, has never been doubted or questioned, till the promulgation of the opinions of the majority of the Court in this case of Dred Scott.

*Fifth.* They declare it to be their opinion, that slavery is not a local institution. They hold that it is not confined to the limits of the state, by the laws of which it is created, but may be carried beyond them and into the territories of the United States. This opinion is in direct opposition to at least three solemn decisions of the Supreme Court of the United States, and to the decisions of the courts of all the free states, and to the decisions of the courts of most, if not all, of the slave states of our Union. It is contrary to one of the fundamental principles of the common law, viz., that every man has an inalienable right to his liberty, and that it can only be taken from him by a statute of the state in which he lives; and every tyro in the profession of the law knows that the statute of a state has no force beyond its limits.

It follows as a direct consequence of this doctrine, that a master may take his slave into a free state without dissolving the relation of master and slave; and your committee cannot but be alarmed and shocked at the apprehension that some future

decision of the pro-slavery majority of the Supreme Court will authorize a slave-driver, as threatened by the devotees of slavery, to call the roll of his manacled gang at the foot of the monument on Bunker Hill, reared and consecrated to freedom.

The proposition which the majority of the Court laid down in deciding the question legitimately before them, viz., that no man of the African race, descended however remotely from a slave, is a citizen of the United States, though born a freeman, and his ancestors for many generations before him also freemen, and though ninety-nine parts out of one hundred of the blood which runs in his veins is Anglo-Saxon, and his skin whiter, his heart purer, and his head clearer than those of the judge who outlaws him, and though his father may have fallen in the battle at New Orleans, on the glorious eighth of January, at the call of our Jackson, or his grandfather served with honor, or died in battle under our Washington, is a violation of the sacred principles announced in our Declaration of Independence, hostile to the spirit of our institutions and the age in which we live, a departure from the liberal doctrines of the common law, and opposed to the weight of judicial authority in this country and England.

Your committee have no hesitation in expressing the opinion that this decision is erroneous, and ought to be overruled; and they believe it will be overruled, as soon as the free states have their just representation on the bench of that Court.

The attention of your committee was arrested by a proposition, stated by Chief Justice Taney in the opinion he delivered, as the organ of a majority of the Court, in the following words: "*They (the colored race) had no rights which white men were bound to respect.*" Your committee cannot forbear to characterize this proposition as *inhuman, unchristian, atrocious*—disgraceful to the judge who uttered it, and to the tribunal which sanctioned it.

The most censurable part of the conduct of these five pro-slavery judges yet remains to be stated, and it is this:—The five constitutional questions above stated, which were not involved in the point before the Court for decision, and upon which, in violation of judicial decorum and established precedents, they volunteered opinions, have, within the last two years, become political



and party questions, have divided the two great political parties of the country; and that division, unfortunately, has assumed a sectional character. These five judges are all located in the pro-slavery section, and identified with the pro-slavery party. Under such circumstances, if true manly delicacy did not, a decent respect for the feelings and opinions of the friends of free institutions, should have restrained them from uttering a single word not necessary to the decision of the question before them. Yet how widely different was their conduct! They volunteered, against decorum and precedent, to identify themselves and our great national Court with a sectional party, and to bring down that high tribunal from the lofty place it has hitherto filled in the reverential respect of the nation, to the arena of party and sectional strife. They have destroyed the confidence of the people in the Court, by stamping upon it a black mark of sectionalism and partisanship. They have, moreover, placed themselves and the Court they control in the front rank of pro-slavery propagandism, and offensive aggression upon the rights of the free states.

Your committee cannot omit to notice in this connection the *time* selected by these five judges for taking ground officially with the pro-slavery party of the country. That time was strikingly propitious to protect them from impeachment, and accomplish their purpose. A new pro-slavery, sectional administration was just being inaugurated, and consequently had the whole patronage of the Federal Government to aid in screening these partisan judges from merited punishment, and produce acquiescence in their ultra pro-slavery, unconstitutional doctrines. The fate of Kansas, too, was then impending, and these doctrines, if carried out, would consign her to the deadly embrace of slavery. Your committee reluctantly admit the thought, that the national ermine was used to cover and effect such an unhallowed purpose; but they have seen too many evidences of the desperate acts to which pro-slavery fanaticism leads men subject to its influence, to lay aside the fearful apprehension that our national Court has been brought under its dominion.

The Supreme Court of the United States was established by our forefathers to secure a fair and enlightened exposition of the Constitution, and an independent and impartial adjudication of

constitutional questions; and thereby preserve the rights of the several states and the citizens thereof. The influence and power of the Court having now been marshalled on the side of proslavery propagandism, and against the rights of the citizens of the free states, it no longer accomplishes the purpose of its institution. The safety and peace of the nation require its reorganization, so as to admit into it a fair and equal representation from the free states, according to the ratio of population between the free and slave states, which can and ought promptly to be done by act of Congress. Until this measure is accomplished, it is manifestly the duty of this state to take and maintain a firm stand against the encroachments of slavery, and keep this direful evil out of her borders.

To this end your committee announce and recommend the adoption of the proposition, that slavery shall never pollute the free soil of the Empire state, let the consequences be what they may; and in making this declaration, we place the Empire state on the republican doctrines of 1798, known as the "Virginia Resolutions," which were acquiesced in by the great republican party of that day, and are in the following words:

*"Resolved*, That this assembly doth explicitly and peremptorily declare that it views the powers of the Federal Government as resulting from the compact to which the states are parties; as limited by the plain sense and intention of the instrument constituting that compact; as no further valid than they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers not granted by the said compact, the states who are the parties thereto have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights, and liberties appertaining to them."

To carry into effect this proposition, your committee recommend the adoption of the resolutions, herewith presented, and the passage of an act entitled "An act to secure freedom to all persons within this state," herewith also presented.

SAMUEL A. FOOT.  
EDWARD M. MADDEN,  
M. LINDLEY LEE,  
JOHN T. HOGEBOOM,  
JOHN H. WOOSTER,  
HENRY W. BECKWITH.

ALBANY, April 9, 1857.

## RESOLUTIONS.

"*Resolved*, That this state will not allow slavery within her borders in any form, or under any pretence, or for any time, however short, let the consequences be what they may.

"*Resolved*, That the Supreme Court of the United States, by reason of a majority of the judges thereof having identified it with a sectional and aggressive party, has lost the confidence and respect of the people of this state.

"*Resolved*, That the Governor of this state be, and he hereby is, respectfully requested to transmit a copy of this report, the law above mentioned, and these resolutions, to the respective Governors of the states of this Union."

"AN ACT TO SECURE FREEDOM TO ALL PERSONS WITHIN THIS STATE.

"*The people of the State of New York, represented in Senate and Assembly, do enact as follows :*

"§ 1. Neither descent, near or remote, from an African, whether such African is, or may have been, a slave or not, nor color of skin, shall disqualify any person from being, or prevent any person from becoming, a citizen of this state, nor deprive such person of the rights and privileges of a citizen thereof.

"§ 2. Every slave who shall come, or be brought, or be, in this state with the consent of his or her master or mistress, or who shall come, or be brought, or be, involuntarily in this state, shall be free.

"§ 3. Every person who shall hold, or attempt to hold, in this state, in slavery or as a slave, any person mentioned as a slave in the second section of this act, or any free person of color, in any form, or under any pretence, or for any time however short, shall be deemed guilty of felony, and on conviction thereof shall be confined in the State Prison at hard labor for a term not less than two, nor more than ten years."

No. L.—VOL. 1, p. 335.

*Slavery.*

*An Examination of the Case of Dred Scott against Sandford, in the Supreme Court of the United States, and a full and fair Exposition of the Decision of the Court, and of the Opinions of the Majority of the Judges.*

The duty assigned me for this evening is an examination of the case of Dred Scott *against* Sandford, in the Supreme Court of the United States; and an exposition of the decision of the court, and of the opinions of the majority of the judges.

As this duty has been assigned to me to accomplish no partisan or ambitious purpose, but solely for our mutual instruction and improvement, that we, thereby, may be the better able to understand our rights and duties as citizens of this state and of the United States, I shall discharge it with entire impartiality and truthfulness, and make no statement, nor advance any proposition, of doubtful correctness; and as our object is not to acquaint ourselves with the technical and professional niceties of the case, but to obtain clear and correct views of the real and true question which was before the court, and decided by it, and of the propositions advanced and sanctioned by a majority of the judges, and which affect the rights of the several states, and of the citizens thereof, I shall pass over all the questions arising on the record which relate to the form of the pleadings, and the manner in which the case came before the court.

The action was commenced in the Circuit Court of the United States for the district of Missouri, to establish the freedom of Dred Scott, his wife, and their two daughters, who were claimed and held by Sandford, the defendant, as slaves.

The courts of the United States are not courts of general jurisdiction, having a right to hear and decide controversies of all kinds, but have jurisdiction over, and authority to hear and determine only certain specified cases, all of which are designated in the Constitution of the United States. Among

those cases so designated are controversies between citizens of different states. It follows, as a natural and logical sequence from this constitution of the courts of the United States, that whenever a party commences an action in one of those courts, he must show, on his written pleading, that he has a right to commence his suit in that court; or, in other words, that the controversy between him and his adversary is one of those specified in the Constitution of the United States, which the courts thereof have a right to hear and decide. If he fails to show this, his suit is always dismissed for want of jurisdiction. Accordingly, Dred Scott, in his first written pleading, called in this case a declaration, stated that he was a citizen of the state of Missouri, and Sandford, a citizen of the state of Massachusetts; and hence the controversy, to be heard and decided, was between citizens of different states.

Sandford, by his written pleas, placed his defence on two grounds: *First*. He interposed what is technically called a plea in abatement to the jurisdiction of the court, and alleged that Dred Scott was not a citizen of the state of Missouri, because he was a "negro of African descent—his ancestors were of pure African blood, and were brought into this country and sold as negro slaves;" and prayed judgment that the court would not take further cognizance of the action. *Second*. He interposed what is technically called a plea in bar; or, in other words, a defence on the merits; and alleged that Dred Scott, his wife and daughters, were his slaves.

The fact stated by Sandford in his plea in abatement, was admitted by Scott to be true, viz., that he was "a negro of African descent," &c.

In answer to Sandford's plea in bar on the merits, Scott replied, and denied that he, his wife and daughters were slaves of Sandford, and insisted that they were free.

Scott, to show that he, his wife and daughters, were free, and Sandford, to show that they were slaves, relied on and mutually admitted the following facts (it is only necessary, however, for the present purpose, to state those which relate to Scott), viz.: That he was formerly a slave in Missouri; was taken by his then master to the state of Illinois, and held there in servitude nearly two years, and was from there taken to a territory of the United



States west of the Mississippi river, and north of thirty-six degrees and thirty minutes of north latitude, and there held in servitude for more than a year, and then, and in the year 1838, brought back to Missouri, and there held in servitude, and sold, before this suit was commenced, to Sandford. While in the territory of the United States, and in the year 1836, Scott was married to his wife, with the consent of his and her then owner.

The Circuit Court decided in favor of Scott on the question of jurisdiction, and against him on the question of his freedom. He appealed to the Supreme Court. Before this high tribunal the case was twice elaborately argued.

The jurisdiction of the court depended on the question whether Scott was a citizen of the state of Missouri; and his freedom on the question whether the taking of a slave by his master into a free state to reside, by the laws of which slavery is prohibited, dissolves the relation of master and slave, and constitutes the slave a freeman, and so fully and absolutely that if taken back again by his master into a slave state, and there held in slavery, he can assert and maintain his freedom.

The Supreme Court of the United States is composed of nine judges. Five are citizens of slave states, and four of free states.

In this case they were divided in opinion, and their views of the Constitution and law, applicable to the rights of the parties, exceedingly diverse.

Chief Justice Taney of Maryland, and Justices Wayne of Georgia, Catron of Tennessee, Daniel of Virginia, and Campbell of Alabama, being a majority, concurred substantially in their views of the rights of the parties, and of the Constitution and law by which those rights were to be determined. The Chief Justice delivered the opinion of the court, and in it presents the arguments and propositions assented to and approved by the majority.

To enable us to understand and form a correct judgment of the positions advanced by the Chief Justice, we must keep in view the Constitution and law, as they were generally understood in the country before the decision of the case under consideration.

Previous to the adoption of the Federal Constitution, each of the thirteen states then existing was sovereign and independent.

They were united by a league called the "Confederation," but by entering into that league they did not surrender any portion of their sovereignty. Each state had and exercised the right of determining who were, or who might become, citizens of it. The confederation not being a government, and only a league between sovereign states, had not, and could not have, citizens. The only citizens there were, or could be, before the adoption of the Federal Constitution, were citizens of the several states.\*

Among civilized nations, and especially those who have adopted that system of law known as the English common law, there are two, and only two, classes of citizens. One acquire their citizenship by birth, and the other by law. They are generally known and distinguished by the appellatives "*native*" and "*adopted*."

When the Government of the United States was established by the adoption of the Constitution, there were no persons who could be citizens of it except those who were citizens of the several states.

Our Federal Government, as we all know, is one of special powers. It can exercise no authority except over the subjects especially committed to its care; and every power not delegated to the United States by the Constitution, or prohibited by it to the states, is reserved to the states. The only provision in the Federal Constitution in regard to citizenship is that which authorizes Congress "to establish an uniform rule of naturalization." Under this provision, Congress passed a law, soon after the adoption of the Constitution, prescribing the terms and manner in which any alien may become "a citizen of the United States, or any of them." The Constitution of the United States is silent on the subject of citizenship by birth, and Congress has passed no law on that subject. Hence citizenship of the United

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\* In most, and probably in all, of the states, at the adoption of the Federal Constitution, there were free colored persons of African descent who were citizens of the state, and many of whom had done good service in the war of the Revolution. The 4th article of the Confederation recognized the existence of such citizens in the several states. The language of it is: "The *free* inhabitants of each of these states \* \* \* shall be entitled to all the privileges and immunities of free citizens in the several states."

States, by birth, rests on the general principle that all persons born within the limits of the United States are citizens thereof. As there were none such at the adoption of the Federal Constitution except native citizens of the several states, they became like citizens of the United States. The Constitution recognizes the two classes of citizens above mentioned, by the provisions that no person shall be a representative unless he has been seven years a citizen of the United States; nor a senator unless he has been nine years a citizen of the United States; nor President, unless a natural-born citizen, or a citizen of the United States at the adoption of the Constitution. No power was prohibited to the states respecting citizenship, except so far as the adoption of aliens was concerned. The states were left, and now are, sovereign in respect to the citizenship of all persons except aliens. With that exception, each state may declare by law who shall, and who shall not, be citizens of it. A naturalized citizen, by residence in a state, becomes a citizen thereof. (*Gassies v. Ballou*, 6 Pet. R., 762.) But each state may determine by law what rights and privileges the citizens, or any class of citizens thereof, shall have and enjoy in it. By the Constitution of the United States, "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." The right which the citizen of a state has to resort to the courts of the United States, is not confined to controversies between citizens of different states, but extends to several other kinds of controversies, and is an important and valuable right.\* Hence the power of a state to declare who shall and who shall not be a citizen thereof, has an exceedingly high value under the Constitution of the United States, in addition to the rights and privileges which may be conferred by the state, and held and enjoyed within it.

The foregoing presents the true position of citizenship in this country, from the adoption of the Federal Constitution to the

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\* A citizen of the United States, as such, has no right to sue in the United States courts; but if he is a resident of, or identified with, any state in the Union, he has a right to sue in the Federal courts, and cannot be deprived of that right, unless he is shown to be a mere wanderer without a home. (Opinion of Thompson, Justice, in *Raub v. De Wolfe*, 1 Paine C. C. R., 588.)

promulgation of the opinions of the majority of the judges in this case of *Dred Scott*.\*

The first and controlling question in the case we are considering was, whether *Dred Scott* was a citizen of the state of Missouri. Chief Justice Taney discusses it elaborately, and states the conclusions of himself and the justices who concurred with him, in the following words: "And upon a full and careful consideration of the subject, the court is of opinion that, upon the facts in the plea of abatement, *Dred Scott* was not a citizen of Missouri within the meaning of the Constitution of the United States, and not entitled as such to sue in its courts, and consequently, that the Circuit Court had no jurisdiction of the case, and that the judgment of that court on the plea in abatement is erroneous." (19 How. R., 427.)

As the state of Missouri had the sole right to determine who should and who should not be citizens thereof (other than naturalized citizens of the United States, of whom it was not pretended *Dred Scott* was one), if the Chief Justice had confined his inquiry to the ascertainment of the fact whether, by the constitution and laws of that state, as expounded by her courts, *Dred Scott* was not a citizen of Missouri, "because he was a negro of African descent, his ancestors of pure African blood, and brought into this country and sold as slaves," then the opinions of himself and his concurring associates would have made no change in the powers and rights of the states in respect to citizenship. But the Chief Justice not only did not confine himself to that inquiry, but he did not make it at all. He commenced his discussion of the question of jurisdiction raised by the plea in abatement, by stating that "The question is simply this: Can a negro, whose ancestors were imported into this country and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and, as such, become entitled to all the rights, and privileges,

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\* Applications had been made occasionally, by colored men, at the Department of State, at Washington, for passports as American citizens to go abroad, and refused. But as the granting or refusing of a passport determined no right, the action of the Department of State made no change in citizenship under our federal and state constitutions and laws.

and immunities guaranteed by that instrument to the citizen—one of which rights is, the privilege of suing in a court of the United States in the cases specified in the Constitution.” After remarking that the plea in abatement “applies to that class of persons only whose ancestors were negroes of the African race, and imported into this country, and sold and held as slaves,” the Chief Justice proceeds and re-states the question as follows: “The only matter in issue before the court, therefore, is, whether the descendants of such slaves, when they shall be emancipated, or who are born of parents who had become free before their birth, are citizens of a state in the sense in which the word citizen is used in the Constitution of the United States.” (19 How. R., 403.)

The Chief Justice then proceeds to show, by various modes of reasoning, that free colored persons of the class mentioned belonged to a degraded race when the Federal Constitution was adopted—were not a portion of the community intended to be protected by the government then instituted—and, in his own words, “had no rights which the white man was bound to respect.” (19 How. R., 407.) He then maintains, by like modes of reasoning, that their condition has not since been changed, and concludes that they are not citizens of the United States, and are not, and cannot become, citizens of a state, so as to be entitled to sue in the courts of the United States.\*

This last proposition, viz., that they are not citizens of a state, and cannot become such, coming in conflict with the power reserved to the states to determine who shall, and who shall not, be citizens thereof, the Chief Justice, speaking, as already mentioned, for himself and his four concurring associates, states and maintains the proposition, “that the Constitution of the United States, upon its adoption, took from the states all power, by any subsequent legislation, to introduce as a citizen into the political family of the United States any one, no matter where he was born, or what might be his character or condition.” (19 How. R., 418.) If this proposition was clothed with judicial authority, so

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\* This position disfranchises all colored persons of African descent and their descendants, who were citizens of the several states when the Constitution of the United States was adopted.



as to have become the law of the land, the several states of the Union would be deprived by it of one of their important and valuable sovereign rights.

We should not omit to notice here, that in this case it was not alleged, or even suggested, that there had been any legislation by the state of Missouri, subsequent to the adoption of the Federal Constitution, affecting in the least Scott's right of citizenship; indeed, the proposition in the form stated was inapplicable to Missouri, as she did not commence her existence as a state until more than thirty years after the Constitution was adopted. But there had been such legislation in the state of Massachusetts, under which colored citizens of that state had claimed, under the Constitution of the United States, their rights as citizens of one of the states of the Union, in some of the slave states, and their rights had been, in those states, not only denied, but a fair trial of them prevented by disorderly assemblies of the people.\*

In this connection, and before proceeding to examine and give an exposition of the opinions of the majority of the judges on the question whether Dred Scott, his wife and their daughters, were slaves, it is proper to state two principles of law, well established and universally adhered to by upright and enlightened judges.

*First.* The decision of a court is a binding authority only on the point or proposition upon which the case *necessarily turned* and was decided.

*Second.* An opinion expressed or a proposition stated by a judge, in delivering his opinion, which is not necessarily involved in the decision of the case before the court for judgment, is called, professionally, "*obiter dictum*," rendered into English, "a thing said by the way," and meaning, "an opinion given in pass-

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\* The right which a citizen of one state has in another state, under the Federal Constitution, came under review before Justice Washington, of the Supreme Court of the United States, in the case of *Lessee of Butler vs. Fansworth* (4 Wash. C. C. R., 102-3), and Justice Washington says, "With respect to the immunities which the rights of citizenship can confer, the citizen of one state is to be considered as a citizen of each and every other state in the Union."

ing, and which, not applying judicially to the case, is not to be resorted to as an authority."

Beside the above principles of law, there are two rules of judicial action, which should be stated.

*First.* When there are several reasons which may be assigned for a decision, a discreet judge will be content with giving only one of them, especially if that one is conclusive, and the other reasons involve delicate or important questions partaking of political or party strife.

*Second.* When an objection is made to the jurisdiction of the court, and the judges decide that the court has not jurisdiction, the case is dismissed, and the judges do not proceed and decide the cause on its merits. To do so is obviously, and I believe is universally considered, improper.

In this connection I ought also to draw your attention to the provisions of the Constitution of the United States, which give the federal courts their jurisdiction.

By article 3, section 1, "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish." By the same article, section 2, "The judicial power shall extend to (enumerating the several cases, and among others) controversies between citizens of different states."

From these provisions of the Constitution, it is obviously immaterial, on a question of jurisdiction in the federal courts, in what court the action is pending, whether in the Supreme or an inferior court, for the question is not, which of the courts of the United States has authority to hear and decide the given case, but whether the *judicial power* of the United States extends to the case, in whatever court it may be pending. So in this case, when the court decided that Dred Scott was not a citizen of the state of Missouri, they decided that this was not a case to which the judicial power of the United States extended, and, of course, no court of the United States had jurisdiction over it.

After announcing the conclusion above stated, that Scott was not a citizen of the state of Missouri, and consequently, that the Circuit Court had no jurisdiction of the case, and that the judgment of that court sustaining its jurisdiction was erroneous and must be reversed, the Chief Justice—speaking, let it always be

remembered, for himself and his concurring associates—proceeds to discuss and decide the case on the merits, and determine whether Dred Scott was a slave; asserting the right and duty to do so on two grounds—*one*, that if Scott was a slave, he was not a citizen, and for that additional reason had not the right to commence this suit in a court of the United States—the *other*, that the Supreme Court has a right, and it is its duty, to review the decisions of the Circuit Court, and as that court had decided this case on the merits and adjudged that Scott was a slave, the Supreme Court ought to review that question, and ascertain if it was rightly decided.

The Chief Justice presented a most elaborate argument to prove that Scott was a slave, and in the course of that argument expresses several very important opinions; and as I present them, I will state in connection with each what was the general understanding of the country previously on the same subject.

*First.* The opinion is given, that the provision in the third section of the fourth article of the Constitution of the United States respecting the territory thereof, in the following words, viz.: “The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory, or other property, belonging to the United States,” was only applicable to the territory owned by the United States when the Constitution was adopted, and did not apply to any territory subsequently acquired (19 How. R., 432, 436, 441, 442); and that over territory acquired subsequently to the adoption of the Constitution, Congress has not full power of legislation. (19 How. R., 447 to 450.)

Previous to the announcement of this opinion, the general, and I think it should be said the universal, understanding of the country and of the different departments of the General Government, was, that the clause in the Constitution above mentioned did apply to *all* the territories of the United States, whenever and however acquired, and gave Congress full power to legislate concerning them, without reference to the time when the right to them was acquired.

In this connection we should recall and keep in view the fact, that Congress has exercised full power of legislation over *all* the territories of the United States, from the adoption of the Consti-

tution to the present time; and that, too, without any reference to the time when they were acquired.

*Second.* The opinion is given that there is no "difference between property in a slave and other property;" that each is entitled to the same protection, and stands on the same footing under our Constitution and laws. (19 How. R., 451, 452.)

Before this opinion was announced, the universal understanding of the country was, that there was a broad distinction between the two kinds of property in many important and marked respects, but palpably and especially in this, that while property in lands and chattels was recognized throughout the whole country, and in every state of the Union, it was with equal universality acknowledged, that property in a slave was against natural right, and could only exist by positive law; that such law could have no operation beyond the limits of the state which enacted it; and that if the slave passed beyond those limits, he was free, with this single qualification, viz., if he *escaped* from servitude into another state of our Union, his master, under a provision of the Constitution of the United States, might reclaim him.

*Third.* The opinion is given, that the Constitution of the United States extends to the territories thereof. (19 How. R., 449, 450.)

Before this opinion was announced, the understanding of the country, it is believed, was universal, that the Constitution of the United States was made for the states, and for them only; that it did not, and could not, by its very terms, include the territories. It was made by "The People of the *United States*" "for the United States of America;" and "in order to form a more perfect Union" between the states. All its provisions relate to the states and citizens thereof. The territories are the property of the United States, and remain their property till they become states and are admitted into the Union. When so admitted, they come under the Federal Constitution, and are governed and protected by it, and not till then. While the property of the United States, Congress exercises over them plenary power of legislation, not only under the clause in the Constitution giving Congress power to "make all needful rules and regulations respecting the territory" of the United States, but by virtue of the sovereign

power which the United States has over the territories belonging to them. This sovereign power has been freely exercised from the beginning of the government, without any regard to the provisions of the Constitution. One of many instances showing this, is the removal by the President of territorial judges; while all judges, high and low, under the Constitution, hold their offices "during good behavior."

*Fourth.* The opinion is given, that Congress has not power to prohibit slavery in the territories of the United States acquired since the adoption of the Constitution, and that the owners of slaves have a right to take their slaves into such territories and hold them there in servitude (19 How. R., 449 to 452), and that the law of Congress, which prohibited slavery in the territories of the United States north of thirty-six degrees and thirty minutes of north latitude, called the Missouri Compromise (those territories having been acquired since the adoption of the Constitution), was unconstitutional and void.\* (19 How. R., 452.)

Previous to the announcement of this opinion, the general understanding of the country was that Congress had power to prohibit slavery in all the territories of the United States, and without reference to the time when they were acquired—that the owners of slaves had not a right to take them into a territory of the United States where slavery did not exist by law, and if they did, the slaves became free—and that the law prohibiting slavery in the territories of the United States north of thirty-six degrees and thirty minutes of north latitude, was constitutional and valid.

In this connection, and to enable us to understand fully and judge correctly of the opinion above stated, we should remember and keep in view *the fact*, that Congress has, in nine instances, and by as many separate laws, prohibited slavery in the territories of the United States—the first act being passed in August, 1789, and the last one in August, 1848. Four of them prohibited slavery in territory acquired since the adoption of the Constitution; *also the fact*, that the Constitution of the United States

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\* Mr. Justice Catron, while concurring in this opinion, placed his own on reasons different from those of his associates.



contains a provision that "No state shall pass a law impairing the obligation of contracts." A vested right is a contract executed; and the courts of the United States, by a series of decisions, have established the principle that a state cannot, either by a law of its Legislature or a clause in its constitution, destroy or injuriously disturb a vested right, as that would impair the obligation of a contract. Hence, if the owners of slaves may take them into a territory of the United States and hold them there, as they may other property, that territory, when it becomes a state, cannot by a provision of its constitution or a law of its Legislature, put an end to slavery within it; \* *also the fact*, that if a citizen of a slave state, say of Georgia, being the owner of slaves under and by virtue of the laws of that state, has a right to take them into a territory of the United States and hold them there, while it is a territory, and after it becomes a state, he so holds them by virtue of the laws of Georgia; and thus effect is given to laws of that state, not only beyond the limits of the state, but in a territory of the United States, and in another state of the Union; *also*, and *lastly, the fact*, that the law called the "Missouri Compromise," was not only acquiesced in from its passage in 1820 to its repeal in 1854, but was re-enacted in 1845, when Texas was admitted into the Union.†

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\* 1. This shows that "squatter or popular sovereignty," as it is called, is an illusion; and assuming that the opinion of the five judges—viz., that slaves may be taken into the territories and held there—is law, then Mr. Buchanan's declaration that "Kansas is as much a slave state as South Carolina," is strictly true—and so will every other state be a slave state which shall be formed out of a territory into which slaves may have been taken.

2. In this connection the startling thought arises, What will be the effect of the opinions of the majority of the judges, in connection with the clause in the Constitution protecting vested rights, upon the legislation of the several states which have abolished slavery? Does not that whole body of legislation fall as unconstitutional? And what can prevent former owners of slaves or their heirs, in the free states, from reclaiming their former slaves, and the posterity of their female slaves, and reducing them again to slavery?

† The third article of the act admitting Texas, is as follows: "Article III. New states of convenient size, not exceeding four in number, in addition to said state of Texas, and having sufficient population, may hereafter, by the consent of said state, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the Federal Constitution. And

*Fifth.*—The opinion is given that the taking of Dred Scott by his master into the State of Illinois, where slavery is forbidden by its constitution and laws, and holding him there in servitude nearly two years, did not emancipate him.

Previous to the announcement of this opinion, the general, and I believe the universal, understanding of the country was, that the great and noble principle of the common law prevailed in all the free states of this Union, that as soon as a slave placed his foot on free soil, he became a freeman; and that the only modification of this principle was in the provision of our Federal Constitution before mentioned, which entitles a master to a return of his slave when he escapes from his service into another state.

To form a correct judgment respecting the fifth opinion above stated, we must call to mind the obvious results which follow from it. If an owner of slaves can take them into a free state for a temporary purpose or residence, without thereby dissolving the relation of master and slave, and emancipating them, then the law of the slave state under and by virtue of which they are his slaves, has an operation not only beyond the limits of that slave state, but actually in another sovereign state of the Union; and thus compels the latter state to tolerate slavery within its borders and against its will. If an owner of slaves can hold them in a free state for the length of time the owner of Dred Scott held him in Illinois, without thereby emancipating them, there seems to be nothing to prevent an owner from taking his slaves into a free state and holding them for any length of time and for any purpose, provided he does not intend to become a permanent resident of the free state, and designs at some future day to return with his slaves to the slave state from which he came, or go to some other slave state. In this way slave labor may be

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such states as may be formed out of that portion of said territory lying south of thirty-six degrees thirty minutes north latitude, commonly called the Missouri Compromise line, shall be admitted into the Union, with or without slavery, as the people of each state asking may desire; and in such state or states as shall be formed out of said territory, north of said Missouri Compromise line, slavery or involuntary servitude (except for crime) shall be prohibited."

brought into contact and competition with free labor in the free states. An owner of slaves may take a contract on a canal or railroad in a free state, and bring his slaves there to do the work. And if property in a slave stands on the same footing under the constitution and laws as property in lands and chattels, as the majority of the judges hold that it does, it would seem to follow that a slave may be taken and held anywhere, in any state, and for any length of time, that a citizen may take and hold his carriage or his horse.

After expressing the opinions above stated, and making full and elaborate arguments to sustain them, the Chief Justice states the final judgment of the court to be, that Dred Scott is not a citizen of the state of Missouri, "and that the Circuit Court of the United States, for that reason, had no jurisdiction of the case, and could give no judgment in it. Its judgment for the defendant (Sandford) must consequently be reversed, and a mandate issued, directing the suit to be dismissed for want of jurisdiction." (19 How. R., 454.)

Justices Nelson of New York and Grier of Pennsylvania, expressed no opinion on the question of jurisdiction, not considering it before the court, but discussed the case on the merits, viz., whether Dred Scott was a slave, and were of opinion that that question should be determined by the laws of Missouri; and after a full examination of the constitution, laws, and decisions of that state, came to the conclusion that by them Dred Scott was a slave, and they were in favor of affirming the judgment of the Circuit Court. (19 How. R., 469.) Justice Grier also expressed an opinion that the Missouri Compromise was unconstitutional.

Justices McLean of Ohio and Curtis of Massachusetts discussed most elaborately all the questions which arose in the cause, and took opposite views, and expressed opposite opinions, on all of them, to the majority of the judges. Their opinions were, that Dred Scott was a citizen of the state of Missouri, and had a right to sue Sandford in the courts of the United States; and as those courts had jurisdiction of the cause, they were bound to examine and decide it on the merits. They accordingly did examine the question whether Dred Scott was a slave, and came to the conclusion that he was a freeman; and as the Circuit Court had decided that Scott was a slave, they were of

opinion that for that reason the judgment of that court was erroneous, and ought to be reversed.

The foregoing statement and exposition of the judgment of the court and of the opinions of Chief Justice Taney and his four concurring associates, will enable all to form a correct judgment whether the first question before the court was whether this was a case to which the judicial power of the United States extended, or, in other words, whether it was a controversy between citizens of different states, and depended on the question whether Scott was a citizen of the state of Missouri according to the constitution and laws thereof. If that was the first question, and the court decided as the majority of the judges certainly did, and pronounced the judgment of the court to be that Dred Scott was not a citizen of the state of Missouri, and for that reason the courts of the United States had not jurisdiction of the case and ordered it to be dismissed, then a correct judgment can be formed whether the judges in the majority, having decided this was not a case to which the judicial power of the United States extended, had a right, or could, with even the appearance of judicial propriety, go farther, and express the opinions above stated, viz.:

1. That free colored persons, whose ancestors were imported into this country and sold as slaves, "had no rights which the white man was bound to respect," and were not citizens of the United States.

2. That "the Constitution of the United States, upon its adoption, took from the states all power by any subsequent legislation to introduce as a citizen into the political family of the United States any one, no matter where he was born, or what might be his character or condition."

3. That the clause in the Federal Constitution which gives Congress full power of legislation over the territories of the United States, applies only to the territories which the General Government owned when the Constitution was adopted, and does not apply to territories subsequently acquired.

4. That over territories acquired by the General Government since the adoption of the Federal Constitution, Congress has not full power of legislation.

5. That there is no difference between property in a slave and other property.

6. That the Constitution of the United States extends to the territories thereof.

7. That Congress has not power to prohibit slavery in the territories acquired since the Constitution was adopted.

8. That the owners of slaves have a right to take their slaves into territories so acquired, and hold them there in servitude.

9. That the act of Congress passed in 1820, prohibiting slavery in the territories north of thirty-six degrees and thirty minutes of north latitude, was unconstitutional and void.

10. That the taking of a slave by his master into a free state, and keeping him there in his service for two years, does not entitle him to his freedom.

If these opinions are clothed with judicial authority, and for that reason are the law of the land, we cannot fail to see that they give the country a new constitution and a new system of law on the subject of slavery and the government of our territories, and widely different from those given us by our fathers, and under which we have hitherto lived. But if they are extra-judicial, mere "*obiter dicta*," and have no judicial authority, then a most serious question arises for the decision of the country, and upon which every citizen should be prepared to form an enlightened judgment; and that question is, What constitutional and lawful action can be taken to prevent these opinions from being engrafted on our Constitution and laws by judicial legislation? Should the Supreme Court of the United States remain organized as at present, with only nine judges, and five of them citizens of the slave states, there can scarcely remain a doubt but that, as cases arise, they will be decided in accordance with these opinions. Congress has power to reorganize that court; and the question is, Shall that be done so to give the free states a fair representation in that tribunal? In favor of this measure, it is said that the slave states have less than half the number of free white people, and less than one-third of the amount of litigation, which the free states have; and that it is, consequently, just and proper that the court should be so organized as to give each portion of the Union an equal and fair proportion of the judges.



On the other hand, it is said re-organization of the court would be a harsh and dangerous measure. Each citizen must decide for himself which is the greater evil, to reorganize the court or allow these opinions to become parts of our Constitution and laws, and give us a new constitutional and legal system on the subject of slavery and our territories.\*

GENEVA, N. Y., *December 28, 1858.*

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\* In February, 1847, Mr. Calhoun, then a senator in Congress from South Carolina, submitted to the Senate the following resolutions:

"*Resolved*, That the territories of the United States belong to the several states composing this Union, and are held by them as their joint and common property.

"*Resolved*, That Congress, as the joint agent and representative of the states of the Union, has no right to make any law or do any act whatever that shall directly, or by its effects, make any discrimination between the states of this Union, by which any one of them shall be deprived of its full and equal rights in any territory of the United States acquired or to be acquired."

"*Resolved*, That the enactment of any law which should directly, or by its effects, deprive the citizens of any of the states of this Union from emigrating with their property into any of the territories of the United States, would make such a discrimination, and would, therefore, be a violation of the Constitution and the rights of the states from which such citizens emigrated, and in derogation of that perfect equality which belongs to them as members of this Union, and would tend directly to subvert the Union itself."

These resolutions were at once denounced on all sides as a "fire-brand," calculated to increase dissensions between the free and slave states, and disturb the peace of the country. They were so universally condemned, not only in the free states, but by the considerate and patriotic citizens of the slave states, for their ultra, sectional, and unconstitutional sentiments and principles, that Mr. Calhoun himself never ventured to ask any action in the Senate upon them. They produced no action anywhere, except in a few of the slave states—Virginia, South Carolina, Florida, and Missouri adopted them at the time, as the basis of a new party organization; but it was not adhered to, and the resolutions sunk into the mass of extravagant excesses of sectional and partisan zeal, and were forgotten. Yet unfortunately for the peace and harmony of the country—unfortunately for the dignity and usefulness of our highest judicial tribunal—it is too plain that the majority of the judges in this case of *Dred Scott* called up these resolutions from the oblivion to which they had been justly consigned, and, passing beyond the question before the court, have endeavored to give to them judicial sanction,

## NOTICES OF THE PRECEDING BY PUBLIC JOURNALS.

Long dissertations were delivered in the Dred Scott case by Judge Taney and the majority of the judges who mainly agreed with him in his conclusions. These elaborate essays have been carefully analyzed by the Hon. Samuel A. Foot, of Geneva, who has put the substance of their conclusions in a very small compass, and shown in what manner, if accepted as law, they subvert principles hitherto recognized as the law of the land, and what other principles they establish in their place. He has also examined the important question how far the opinions expressed by them are to be received as decisions binding upon the courts of law, and how far they are to be regarded as what the lawyers call *obiter dicta*, or extra-judicial observations, not carrying with them any authority except as expressions of the views of eminent jurists.

This task Judge Foot has executed with great clearness and in a very dispassionate manner—a manner more strictly judicial, in fact, than that of the judges whose opinions he has examined. He draws no conclusion, but gives the reader the opportunity and the means of forming his conclusions for himself. A pamphlet of nineteen octavo pages, in a fair, large type, contains the result of Judge Foot's examination.

Some such synopsis of the opinions of the court, comprising a comparison of them with the views of the question which have hitherto been acknowledged to be law, has been, we think, much wanted by those who discuss this subject. The Dred Scott decision, as it is called, is destined to become a fruitful source of controversy. If its authority be confined to the simple point in the case which it was necessary to decide, and which, in fact, Judge Taney and his associates first decided—that the negro, Dred Scott, was not a citizen of Missouri—then only a single, though still important, innovation has been made upon the ancient and established principles of law applicable to the subject. But if all the remaining positions and doctrines which were brought to bear upon the case by him and the majority of the judges are to be regarded as law, then a new code for the black race in all the states has been palmed upon us by this judicial juggle.

No impartial man, however, can read Judge Foot's pamphlet without perceiving how far the judges have gone beyond their proper authority. No one after reading it could maintain, as some of our journals have done, that the question whether Congress can rightfully prohibit slavery in the territories has been settled by the Supreme Court against those who maintain the right. We commend Judge Foot's pamphlet to the perusal of all who are yet without clear ideas or convictions on this and other important points connected

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and engraft them, and their ultra, pro-slavery, and unconstitutional principles, upon our institutions, and thus change them, and so fundamentally, as to nationalize slavery, and turn this nation into a great slaveholding Republic.

with the decision. It deserves to be extensively circulated. Copies of it can be obtained, at the cost of printing, at the desk of this office.—*N. Y. Evening Post*, Tuesday Evening, January 11.

Hon. Samuel A. Foot, formerly of the Court of Appeals, has published a pamphlet exposition of the principles laid down in the Dred Scott decision, in which the extraordinary doctrines therein mentioned are subjected to a searching legal analysis. The subject is ably treated, and the outrageous character of the "Opinions" appears more clear than ever when thus tried by the light of legal science. The pamphlet will be read with interest by the public at large as well as professional men. It will be remembered that Judge Foot while in the Legislature introduced resolutions properly condemning the decision, and looking to a reorganization of the Supreme Court.—*Albany Evening Journal*, Thursday Evening, January 13, 1859.

Judge Foot, of this city, late of the Court of Appeals, has published a pamphlet of 19 pages, in which he examines the case of Dred Scott, and gives an exposition of the decision of the court in that case, and of the judicial opinions of the majority of the court. Judge Foot enters upon the consideration of this case in a calm and dispassionate manner, and applies to it a rigid analysis. He is not the advocate, or the prejudiced critic, but the impartial judge, who tests the principles involved by their consistency with the leading maxims of law which lie at the foundation of a system built up during many centuries. It has been often asserted that the judges of the Supreme Court went outside of the case as it was before them, and this especial point, how far their decision is to be held as binding law, and how far it is to be regarded as extra-judicial or a mere expression of opinion, is examined and discussed. Judge Foot's pamphlet is not designed for the legal profession only; it can be read with pleasure and profit by all intelligent men who can appreciate the force of sound reasoning, and who would desire clear views upon a question which has so deeply agitated the public mind. At the close of the pamphlet, Judge Foot publishes (in a note) the resolutions introduced by Mr. Calhoun in the Senate in 1847, and which were then allowed to lie unnoticed on the table, after having been denounced on all sides as a "firebrand." These resolutions were subsequently passed by one southern state after another, and adopted as the basis of a new party creed. In turn, they were forgotten, but the mischievous doctrine was still alive, and was deliberately introduced by the judges of the Supreme Court in this Dred Scott case, with the stamp of judicial sanction. Judge Foot, after stating the points made in the Dred Scott case, concludes his exposition as follows:

"If these opinions are clothed with judicial authority," &c.  
—*N. Y. Commercial Advertiser*, Wednesday Afternoon, January 12.

We have before us, in a printed form, an examination of the Dred Scott case by the Hon. Samuel A. Foot, late a judge of our Court of Appeals, read before the Geneva Literary and Scientific Association, and printed at their

request. Upon analyzing the opinion of the court, as delivered by Chief Justice Taney, it appears that the court undertook to overturn the long-established and universally received legal opinion of the country on no less than ten distinct points, all of high importance. Judge Foot holds, however, that these attempts on the part of the court to introduce this new code of laws was wholly unwarrantable and uncalled for; since, by deciding that they had no jurisdiction to entertain the suit, the court were precluded from entering into the merits, so that the opinions which they delivered were mere *obiter dicta*, things said by the way, and as not being essential to the decision of the case, without any judicial authority.

There is, however, great danger, if some decisive step be not taken to prevent it, that these opinions, thus sanctified by a majority of the Supreme Court, will become engrafted on our Constitution and laws by judicial legislation. Should the Supreme Court of the United States remain organized as at present, with only nine judges, and five of them citizens of the slave states, there is every reason to expect that as cases arise they will be decided in accordance with these opinions. The people, however, have an easy and constitutional means of protecting themselves against this result. Congress has only to exercise its undoubted power of so reorganizing the court as to give the free states their fair representation in it. Whatever objections may be made to this procedure, and conceding even their full force, is it not better to do this than to submit to have a false interpretation placed on the Federal Constitution, and the rights both of Congress and the states sacrificed in accordance with private interest and sectional prejudices? But, in fact, the present Constitution of the court is a gross outrage, which has only produced the consequences which might naturally be expected from it. Not content to exercise their proper duty in the decision of such litigated questions of private right as may come before them, a majority of the judges of the court have undertaken to set themselves up as political dictators. A reorganization of the court—called for, indeed, on grounds of mere judicial convenience—is the constitutional means possessed by Congress and the people of putting a stop to the further progress of this usurpation.—*New York Daily Tribune*, Saturday, January 15, 1859.

The fact that the Dred Scott case has recently been the subject of much loose talk and the ground of many false assumptions on the part of leading journals and leading politicians, was probably the reason why Judge Foot made it the theme of a lecture before the Geneva Literary and Scientific Association, on the 28th ult. The discourse, which has been published by "order of the Association," consists of a succinct statement of the points decided, or assumed to be decided, by the court, and in connection with each point we are told "what was the general understanding of the country previously on the same subject." The judge tells us at the outset, that he shall discharge his duty "with entire impartiality and truthfulness, and make no statement nor advance any proposition of doubtful correctness"—a promise somewhat difficult to fulfill, but, we think, well redeemed. Judge Foot con-

siders the decision of the court as having the force of a precedent only on the first point before it, viz., the question whether the plaintiff, Scott, whose ancestors had been Africans and slaves, was a citizen of the United States, and whether, consequently, the court had any jurisdiction of the suit. Having decided this point in the negative, the judges' duty in the premises was wholly discharged, the case was at once out of court, and the opinions given upon other questions presented by the pleadings have no more authority as law than the opinion of Judge Foot himself. Five propositions were in this way advanced by the court, all of them, at the time, of startling novelty, and of great significance, as foreshadowing the action of that tribunal if any case shall come before it while it continues to be constituted as at present, in which the truth of these propositions is involved. They are: 1. That the clause of the Constitution giving Congress power over the territories applies only to territories owned at the time of the adoption of the Constitution. 2. That there is no difference between property in a slave and other property. 3. That the Constitution extends to the territories. 4. That Congress has no power to prohibit slavery in the territories acquired since the adoption of the Constitution; and 5. That a slave is not emancipated by being taken by his master into a free state. Judge Foot holds, that if these opinions are clothed with judicial authority, "they give the country a new Constitution, and a new system of law, on the subject of slavery and the government of our territories;" and to prevent such a consummation, the Judge suggests the propriety of re-constituting the Supreme Court so as to give the free states a larger representation upon the bench. This plan is not a new one, but we cannot see how it is likely to be of much avail in accomplishing the ends which its advocates desire. So long as the Constitution vests in the President the power of appointing the judges, the appointees, whether from the North or the South, are likely to reflect the opinions in the ascendant at Washington at the time they receive their commissions; and such is the relation in politics between the demand and supply, that we think we should be safe in undertaking to furnish, as occasion might require, twice as many judges as now sit upon the Supreme Bench, who should agree with Taney and Wayne, from New England alone; or a like number from Missouri or Louisiana who should hold the same opinions with Curtis and McLean. Indeed, on some of the points assumed to be decided in the Dred Scott case, the great body of the law which the court undertook to overturn had been formed at the South, as may be seen in the long list of cases cited in the opinion of Judge Curtis. The only judge appointed to the Supreme Court since the Dred Scott case was decided is from the state of Maine, and it is not improbable that if the same questions should again come before the court, the dissenting minority would be smaller than it was two years ago.

In connection with this subject, Judge Foot starts a curious question. "No state," says the Constitution of the United States, "shall pass a law impairing the obligation of contracts." Under this clause it has been decided that no state can interfere with vested rights. "In this connection," says the Judge, "the startling thought arises, What will be the effect of the



opinion of a majority of the judges in connection with the clause in the Constitution protecting vested rights, upon the legislation of the several states which have abolished slavery? Does not that whole body of legislation fall as unconstitutional? And what can prevent former owners of slaves or their heirs, in the free states, from reclaiming their former slaves, and the posterity of their female slaves, and reducing them again to slavery?" *Non nostrum*, &c.; we do not propose to answer the question, but we suggest, with all deference, that it is not materially affected by the Dred Scott case, and that it might have been asked with equal propriety twenty-five years ago.

The pamphlet is a terse and forcible statement, and it would be difficult to include the same amount of matter in a smaller space. It is one of its chief merits that it deals almost wholly in facts, leaving the reader to draw his own inferences. All who pretend to keep posted up in the politics of the day should procure a copy.—*The Century*, Saturday, January 22, 1859.

JUDGE FOOT ON THE DRED SCOTT CASE.—This is the title of a pamphlet by the Hon. S. A. Foot, LL.D., late Judge of the Court of Appeals in this state, reviewing the decisions of the Supreme Court of the United States, or rather the opinion of a bare majority of the judges, in the Dred Scott case. It is a clear, concise, and convincing document. Judge Foot shows both the injustice of the decision and the lack of jurisdiction of the court, on their own showing. If Dred Scott was not a citizen, the Supreme Court had nothing to do with the case, except to dismiss it; for it deals only with controversies with *citizens* of different states. Moreover, it is an established principle of law that "when an objection is made to the jurisdiction of the court, and the judges decide that the court has not jurisdiction, the case is dismissed, and the judges do not proceed and decide the cause on its merits. To do so is obviously, and, I believe, is universally considered, improper." And besides, "an opinion expressed or a proposition stated by a judge in delivering his opinion, which is not necessarily involved in the decision of the case before the court for judgment, is called, professionally, '*obiter dictum*,' rendered into English, 'a thing said by the way,' and meaning, 'an opinion given in passing, and which, not applying judicially to the case, is not to be resorted to as an authority.'" The impertinence and impropriety, as well as invalidity of this decision upon any point except that of citizenship, will thus be seen. Yet the points upon which the decision expresses an opinion are of vital importance, and in conflict with the principles and practice of the Constitution hitherto. They are as follows:

1. That free colored persons, whose ancestors were imported into this country and sold as slaves, "had no rights which the white man was bound to respect," and were not citizens of the United States.

2. That "the Constitution of the United States, upon its adoption, took from the states all power by any subsequent legislation to introduce as a citizen into the political family of the United States any one, no matter where he was born, or what might be his character or condition."

3. That the clause in the Federal Constitution which gives Congress full power of legislation over the territories of the United States, applies only to the territories which the General Government owned when the Constitution was adopted, and does not apply to territories subsequently acquired.

4. That over territories acquired by the General Government since the adoption of the Federal Constitution, Congress has not full power of legislation.

5. That there is no difference between property in a slave and other property.

6. That the Constitution of the United States extends to the territories thereof.

7. That Congress has not power to prohibit slavery in the territories acquired since the Constitution was adopted.

8. That the owners of slaves have a right to take their slaves into territories so acquired, and hold them there in servitude.

9. That the act of Congress passed in 1820, prohibiting slavery in the territories north of thirty-six degrees and thirty minutes of north latitude, was unconstitutional and void.

10. That the taking of a slave by his master into a free state, and keeping him there in his service for two years, does not entitle him to his freedom.

In conclusion the Judge pertinently remarks :

"If these opinions are clothed with judicial authority, and for that reason are the law of the land," &c.

—*The Evangelist*, Thursday Morning, February 2, 1859.

NO. LI.—VOL. 1, p. 342.

*Presidential Election of 1860.*

Judge FOOT, upon taking the chair, addressed the meeting substantially as follows:

FELLOW-CITIZENS:—We meet this evening to consult and prepare for the discharge of one of the highest duties of American citizens, viz., the election of a Chief Magistrate of this great nation.

I thank you for the honor of presiding over this meeting.

Every Presidential election is important, but the present one is eminently so. The great issue presented involves vitally, not

only the prosperity, but the character of the country. It will settle the question whether this nation is, and shall hereafter be, a great slaveholding republic, or a nation of freemen—whether free or slave labor shall be the predominating interest of this country. We know that hitherto slavery has exercised almost an unlimited control over our General Government, and especially so during the present and previous administrations. The supporters and advocates of the system of slave labor have at length taken and boldly maintain the position, that slavery is right in itself and a blessing, and insist upon extending it over our territories; and the same principles and doctrines which will carry it into the territories will carry it into and sustain it in every free state of our Union. (Applause.) The controlling influence and aggressive action of slavery have so alarmed the freemen of the country that they have united and formed the great republican party. Not to interfere with or disturb slavery in the states where by the laws thereof it exists, but to confine it to those states, and prevent it from extending into the free states and the territories now free. (Applause.)

Slavery has thus far accomplished its purpose of aggression and control of the General Government by identifying itself with the democratic party, and that party has at last become purely a pro-slavery party. Though now divided, yet the division has arisen more from a struggle for office and political influence, than from an honest difference of opinion respecting the principles which should govern the administration of the General Government in regard to slavery.

The watch-word of one wing of the democracy is, “a slave code for the territories.” The watch-word of the other wing is, “squatter or popular sovereignty.” The former is easily understood; the latter is a riddle. (Applause.) The only practical interpretation of this riddle which has as yet been given, is the bloody strife in Kansas, and the introduction of slavery into our territory of New Mexico, which before was free soil. If, therefore, either wing of the democracy should come into power, freedom and free labor would fall a sacrifice to its blighting influence. (Applause.)

Fellow-citizens, brother republicans: Let us, one and all, do our duty this fall, and elect Lincoln and Hamlin. Then we will

have our General Government administered on the basis upon which our fathers founded and administered it; then freedom will again be national and slavery local. (Great applause.)

It would give me pleasure to extend my remarks if desired, but the evening has been set apart to hear a distinguished advocate of republican doctrines.

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No. LII.—VOL. 1, p. 349.

*Death of Judge William Kent.*

MR. CHAIRMAN:—The duty of seconding the adoption of the resolutions which have been presented to the meeting, has been assigned to me. That duty is freely discharged, as I fully concur in the sentiments expressed in the resolutions, and it is moreover grateful to my feelings to have so suitable an opportunity to manifest my regard for the memory of our deceased brother, with whom I have stood in intimate relations of business and friendship for a lifetime. After graduating with credit at Union College, he was placed by his distinguished father, Chancellor Kent, at Kinderhook, under the instruction of Peter Van Schaick, one of the most learned and accomplished lawyers of this state, and who had then been compelled to retire from active service by reason of his impaired sight. There he passed, I think, two years studying and acquiring a knowledge of the principles of his profession. He then came to Albany, where his father resided, and, in the year 1822, entered my office to complete his clerkship, and more especially to acquire a knowledge of pleading and practice. He remained with me until the autumn of 1823, when his father removed to this city, and he came with him. While in my office he was active, attentive, and studious. He finished his clerkship in this city with the Hon. Josiah Ogden Hoffman, and, on being admitted to the bar, entered into copartnership with him. I removed from Albany to this city in May, 1828, and entered into copartnership with our deceased brother. We continued in copartnership for two years, and occupied offices in connection with

his father. In June, 1828, the Franklin Bank failed, and Chancellor Walworth appointed Chancellor Kent receiver. The affairs of that bank were greatly extended and complicated, which gave our firm of Foot & Kent a large and lucrative business. My nephew, Henry E. Davies, the present Judge of the Court of Appeals, having removed from Buffalo to this city, a new business arrangement was made in the spring of 1830. Mr. Davies entered into copartnership with me, and Mr. Kent formed a connection with William S. Johnson. The partnership of Foot & Davies continued till the spring of 1847, when I removed to Geneva, and then our deceased brother took my place, and formed a copartnership with Mr. Davies. This connection continued for several years. On my way home from this city to Geneva, near the end of the month of September last, I stopped at Fishkill to pass a Sabbath with my relative, Judge Davies, and visit my friend, Judge Kent. At the close of the Sabbath, Judge Davies and I called upon Judge Kent. We found him walking in his lawn. As soon as he saw me he approached and met me. It was our first meeting since his illness. Enfeebled by sickness, he could not command his feelings, nor could I entirely command my own. After walking with him some time over his beautiful grounds, conversing sparingly, and on topics least calculated to excite our sensibilities, we entered his house. A pleasant conversation with him and his family ensued. Fearing to prolong my visit, though urged by him to do so, I took leave of him, apprehensive that it would be, as it was, our last meeting. Thus closed an intimate business and social intercourse, which lasted for thirty-seven years, without an incident or a remark to interrupt or mar its happiness. This enables me to speak of our deceased brother with knowledge, and to say, what simple truth requires me to say, that he was an honest man, a good lawyer, a learned and upright judge, a ripe scholar, and a finished gentleman. In one respect he excelled all men I have ever known, and that was, in the care and watchfulness with which he avoided injuring the feelings of others. No person, high or low, rich or poor, ever heard him make a rude, harsh, or unkind remark. It was a lovely trait of his character, and one which rendered him so acceptable, as he was, to all. I could recall and dwell for hours on pleasing incidents of his well-spent life, but they are more appropriate for the



social circle, or retired contemplation, than public exhibition. My feelings lead me rather to think than to speak of him ; and I will close my remarks with the observation, that we may justly be proud of our country and institutions, when in the one, and under the fostering influence of the other, men like William Kent are raised, live, and die.

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No. LIII.—VOL. 1, p. 349.

*Raising Flag on Church.*

FELLOW-CITIZENS AND WORSHIPPERS:—We must not regard the raising of the flag of our country over the church where we worship, a mere ceremony or festive exhibition, at which we are to indulge and express feelings of joyful mirth. The occasion is solemn, and full of meaning. The flag of our country represents every sentiment and right which American citizens hold dear. It is the emblem of our constitutional freedom, of the protection under wise and just laws of our rights of person, property, and conscience, of our national power, honor, and fame ; and to the Christian patriot, the flag of our country has a holy and almost heavenly import. He looks upon it as embodying the majesty and authority of a government, which his duty as a Christian requires him to respect and obey as ordained of God.

We are doomed to live at a time when foul treason has insulted this national emblem, and attempted to destroy our noble and beneficent government. We have a great duty to perform—that duty is to crush and punish treason, maintain our government, and vindicate the honor of our insulted flag. To aid us in the discharge of this high duty, we look to Him who reigns in heaven and on earth ; and no more suitable evidence can we give of our trust in Him, of our reliance on His favor, in the great work we are called to perform, than to raise upon the temple dedicated to His service the dear flag of our country, and while it waves over us, worship Him in spirit and truth, and pray for His blessing on our beloved country.

No. LIV.—VOL. 1, p. 354.

*Memorial of Captain John Foot,*

LATE OF THE SECOND REGIMENT MINNESOTA VOLUNTEERS.

The life of Captain Foot, though brief, was so useful, his death so honorable, and his character so commendable, that a memorial of him cannot fail to be acceptable to a large circle of relatives, and to many friends who esteemed and loved him in life, and lamented him in death. His example, too, will not be without its influence on his younger brothers, and the youth of the families of his relatives and friends. It may also extend even farther, and stimulate some of the youth of our country to acquire, even in early manhood, distinguished names and enduring fame.

John Foot was the son of Samuel Alfred and Jane Campbell Foot. He was born on the 30th of April, 1835, in the city of New York, and was the eldest of a large family of sons and daughters. He was baptized by the Rev. W. W. Phillips, pastor of the First Presbyterian Church of the city of New York, of which his parents were then members, on the 19th of June, 1835. The elements of his education were acquired in that city, and mainly at the Grammar-school of the University, of which Mr. Lewis H. Hobby was the principal. In the spring of 1847 his parents removed from the city to the village of Geneva. In that village Mr. Walter T. Taylor kept an excellent English and Classical school. Captain Foot, then a youth of twelve years, entered this school, and enjoyed the faithful and efficient instruction of Mr. Taylor from the spring of 1847 to the spring of 1850. By this time he was well advanced in his education, and nearly prepared to enter Williams' College, where it was intended he should receive his collegiate education. But being considered too young to enter college, and a practical knowledge of farming regarded as useful, he worked on his father's farm during the season of 1850. Early in November of that year, he entered the school of Messrs. B. F. & J. A. Mills, at South Williamstown, Mass., and there completed his preparation for entering Williams'

College. He entered that college in September, 1851, and graduated in July, 1855. The subject of his commencement exercise was "The Earnest Man." In September of that year he went to the city of New York, and commenced the study of law in the office of Wm. E. Curtis, Esq., and was admitted to the bar in December, 1856. He early exhibited unusual adaptation for the profession he had chosen, and shortly after his admission entered upon the discussion of questions before the courts usually entrusted to counsel of mature years. He was not loquacious, but rather erred in the opposite direction, being sometimes almost too chary of language fully to express his views; and was never excited or rude, but, on the contrary, always cool, self-possessed, and gentlemanly.

He had one unusual talent of great value in his profession, and that was, remarkable facility for committing his thoughts to paper with rapidity and accuracy—often writing, in a clear and legible hand, several successive pages with uncommon celerity, without an ungrammatical expression, or erasing, altering, or misspelling a word. Thus qualified, he was, as might well be expected, eminently successful in his profession for a new beginner.

He pursued his profession in the city till October, 1860, when impaired health obliged him to seek a more propitious climate in the West. While on a visit to his parents in December, 1859, he took a cold. Having always enjoyed good health, and fully occupied in his profession, he did not realize the importance of attending to the cold he had taken. A cough ensued, but it was not regarded of sufficient consequence to require attention. The spring of 1860 came round, and his cough still continued. Having some professional business in Georgia, he made a journey there in March; and, after attending to the business in his charge, spent some time with friends in Augusta. His cough was somewhat abated, though not subdued. In August, 1860, having some business at Lawrence, in Kansas, he went there; and, after spending a few days in the vicinity, went out West on the plains, joined a hunting party, and passed a few weeks in hunting buffalo. In the dry and light atmosphere of the prairies his cough sensibly diminished; but on his return to the city, his cough also returned with increased violence. In the latter part

of October, 1860, he left the city for the prairies of the West, in accordance with eminent medical advice. He passed the following winter in Western Missouri, and mostly in the open air. His health greatly improved, and his cough almost entirely subsided. He regarded himself as well, and determined to establish himself and re-commence the practice of his profession at the West. With that view he went to Red Wing, in Minnesota, early in the spring of 1861, and determined to fix his residence there. He made arrangements for renewing his professional business, and on the 15th of April was admitted "as an attorney and counsellor to practice in all the courts" of the state of Minnesota. Soon after this, the call of the President for volunteers to suppress the rebellion and sustain the institutions of the country, reached Minnesota. Capt. Foot deemed it his duty, before re-commencing his profession, to aid in this patriotic work. He soon commenced the raising of a company, for which he had been designated as captain. That having been accomplished, he was commissioned by Governor Ramsay of Minnesota, on the 31st of July, 1861, as Captain of Company I, in the Second Regiment of Minnesota Volunteers. That regiment, after being thoroughly drilled for several months, entered into active service in Kentucky in October, 1861. It went through an active winter's campaign in that state, and took a prominent part in the battle and victory of Mill Spring, on the 19th day of January, 1862. On the 29th of that month Capt. Foot was ordered to Minnesota on recruiting service. He repaired to his post of duty, but his health rapidly declining, and being no longer able to serve his country, he was unwilling to be a burden to it, and on the 24th of February, 1862, offered his resignation, and left Minnesota for his father's residence. He arrived there on the 1st of March, and expired on the 13th, aged 26 years. His funeral took place and his remains were interred at Geneva on Sunday afternoon, the 17th of March, 1862.

While he resided in the city of New York, he attended the Collegiate Reformed Dutch Church, of which the Rev. Dr. Thomas De Witt is the senior pastor. He was fully aware of his approaching end, and came to his paternal home to die. The few days which he was allowed to spend there were passed in gentle and submissive waiting for his approaching end. He was pre-

pared for death, he gave assurance of his trust in his Redeemer, and died peacefully. His death was not expected so soon. The morning that he died, after devotions in his room, he rose to dress for breakfast. His brother, Alfred, was alone in the room with him. While dressing he was attacked with an obstruction of respiration. His brother assisted him to his bed. As he lay down, he said to him, in a natural and gentle tone of voice, and in a calm and peaceful manner, "Good-bye," and immediately expired.

His character and military services, and the sorrow for his death, will appear in the extracts of letters from sympathizing friends, in obituary notices of him in the public journals, and in the sermon of the Rev. Dr. Wiley, which follow.

From the Rev. Dr. De Witt to the father of the deceased, March 18, 1862 :

"Your eldest son and your first-born has been taken from you just as he was entering upon life, with the development of a fair and excellent character, and with the promise of usefulness in his future course. His position, as the oldest child in your large family of children, was an interesting and important one: but He who removed him can repair the loss by making it productive of spiritual and precious fruit to your surviving children. What I knew of John, in the occasional intercourse I had with him, led me to esteem him highly, and to indulge the hope that he would prove a blessing and comfort to his parents and family. But the Lord has taken him to himself, and I trust that the fruit which was forming on earth is now ripened in heaven. How beautiful are the words of Paul, in the 12th chapter to the Hebrews, describing the design, process, and fruits of affliction: 'Now no chastening for the present seemeth to be joyous, but grievous. Nevertheless, afterwards it yieldeth the peaceable fruit of righteousness unto them which are exercised thereby.' Your son died in a good cause, in patriotic devotion to his country. The good seed sown under parental, pious care, and in the associations in which he was placed, doubtless lodged in his mind, and opened his soul to Christ and heaven."

From D. B. Eaton, Esq., to the same. April 8, 1862 : \*

"On my return from a tour to the West, I have heard, with great pain, of the death of your eldest son, who has fallen a martyr in the service of his country in the early prime of life. On my tour I met a young Lieutenant of

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\* Mr. Eaton boarded in the same house with the deceased in the city of New York for several years, and knew him intimately.



the same regiment as your son, and who was with him in the bloody battle of Somerset. The Lieutenant bore the highest testimony to the courtesy, zeal, and officer-like conduct of Captain Foot on every occasion, and to his bravery and presence of mind in that battle. There is no young man whose refinement of manners, high, manly tone, and rare moral and intellectual qualities, have won a higher place in my respect and regard."

From Lieut. C. S. Uline to Lieut. Alfred Foot, brother of the deceased, dated Columbia, Tenn., March 31, 1862:\*

"The sad intelligence of the death of Capt. Foot reached us a few days before the receipt of your letter. Our Colonel saw an obituary notice of him in a New York paper. Let me assure you, many a free, happy heart was shrouded with sadness and gloom at the announcement. I made the statement to his late company, and many, whose hearts have become hardened at death, were moved to tears. During his term of service he had, by his soldierly bearing, his eminent qualities of mind and heart, endeared himself to the regiment, and all feel his loss; but he was especially dear to Company I, who knew him best and loved him most. To them his death is a sore affliction. To his exertions, his indomitable energy, his unerring judgment, his disciplined mind, and perfect self-command, do they owe their present efficiency. None knew Captain Foot but to love and respect him. When the officers of our regiment were examined, he received the highest praise, and he received the only compliment paid our regiment. All knew his powers of endurance were being severely taxed on our march from Lebanon to the battle-ground, but his exuberance of spirits lulled his friends in security, and to a great extent quieted their anxiety. None knew (save one) how fast the poor man was failing. I watched over and cared for him the best I could, and frequently told him, 'This is killing you, and you can never endure these exertions and hardships.' But, sir, that man would have died in his tracks marching on to battle, before he would have given up previous to the fight. Nothing would have induced him to resign or leave us before that. You may be assured that this is sad news to me. No one ever before gained the place in my regard and affection as did Captain Foot. We lived for seven months as brothers, and I hoped when he left us that, when this war was over, we should meet again, and I should enjoy association with him."

Extract from the Geneva Courier of the 19th February, 1862:

"We mentioned the other day, soon after the battle at Somerset, Ky., that our fellow-citizen, the Hon. S. A. Foot, had three sons in the present war.

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\* Lieut. Uline was the First Lieutenant of Company I, 2d Minnesota Volunteers, the same company of which the deceased was Captain.

"The oldest, John Foot, is Captain of Company I, in the 2d Minnesota Volunteers, and was in the hottest of the fight near Somerset. The loss of the regiment in that battle was twelve killed and thirty-three wounded. Captain Foot's company lost two killed and two wounded—one the Second Lieutenant. Colonel Van Cleve, in giving his report of the battle, states that his entire command (2d Minnesota) did its duty 'during the severe and close engagement in which they took a part.' Colonel McCook, Acting Brigadier, in his report, states that the 2d Minnesota were within ten feet of the enemy, and at first the contest was 'almost hand-to-hand—the enemy and the 2d Minnesota were poking their guns through the same fence at each other.' There are very few instances on record in which officers and soldiers have shown an equal amount of bravery. The rebels could not stand before it. Since this battle and the victory won, Captain Foot has been ordered to Minnesota to recruit for his regiment, which has been reduced by sickness and loss in battle."

Extract of a letter from A. B. Hawley, M.D., to the father of deceased, dated Red Wing, Minn., March 21, 1862:

"The sad intelligence of the death of your son reached me this morning, and I write, not only to give you some details in regard to the few days he spent here with me after his return from Kentucky, but also to express my sympathy with you and your family in the loss of one so dear to us all. His death, though sudden, was not unexpected by me. I am confident, from what passed between us, that he was fully aware of his condition. He never said much about his health to any one, but did, on one or two occasions, talk freely to me. I was pained to see how sick he appeared when he returned from Kentucky. He then stated to me that he had been convinced for some months that he should never recover, and desired to remain here in Minnesota in the recruiting service as long as I deemed it safe, but he wished to go home to die. I urged upon him the bad condition of the roads in the spring, in case the weather should affect him unfavorably. He said he would wait a few days before he decided, but on Sunday evening following told me he was going the next day.

"I hope these particulars, though painful, will be a satisfaction to you as showing, that though he fully realized his situation, with that consideration he always showed, he dreaded to foreshadow sorrow, which he so well knew you would soon be called upon to bear.

"My professional duties prevented me from being with him while he was here as much as I desired. Our intercourse was always of the most delightful character—I loved him as a brother, and I shall ever cherish the remembrance of our mutual friendship as among the precious memories of my life. His kindly qualities of head and heart had won for him many friends here among us, and no one whom I ever knew was more respected and beloved."

From his Excellency Alexander Ramsay, Governor of Minnesota, to the same, dated St. Paul, March 21, 1862 :

"I was pained to learn, by your favor of the 15th inst., of the demise of your son, the late Captain of Company I, in our Second Regiment.

"We had hoped, on his return from the regiment after the brilliant engagement at Logan's Cross Roads, in which the Second took, perhaps, the most heroic part, and has rendered its name and that of every member of it forever illustrious, that his health, apparently never very robust, would be restored, so he might be spared to us for many years to come.

"Captain Foot had already, on his entering the military service of the country in the hour of its peril, by his urbane, gentlemanly manner, and his well-trained mind, made a very favorable impression on the community with which he had cast his lot ; and his zeal and perseverance in organizing his company, at a time when enlistments, owing to the season of the year, were secured with great difficulty, were witnessed with admiration. And all honor the memory of one whose patriotism prompted him to devote his life to so noble a cause."

The following obituary notice was published in the principal public journals of the city and state of New York :

#### OBITUARY.

"Died, at the residence of his father, at Geneva, March 13, 1862, John Foot, Esq., of this city, counsellor-at-law, son of Hon. Samuel A. Foot, aged twenty-six. The deceased raised a company in Minnesota, which he led in the gallant and memorable charge of the Second Minnesota Regiment, at the battle of Mill Spring. Captain Foot, broken in constitution by the privations and hardships of the winter's campaign, reached home in time to breathe his last. Distinguished and successful beyond his years in his profession—brave and beloved as a soldier—he gave his life to his country, and his example to his countrymen."

The following appeared in the state paper of Minnesota—The Saint Paul Press—March 28, 1862 :

#### DEATH OF CAPTAIN FOOT.

"It was announced some weeks since that Capt. Foot, of Company I, Second Regiment of Minnesota Volunteers, had resigned on account of ill health, and had repaired to his paternal home in the state of New York. We now have to convey the sad intelligence to his fellow-soldiers and to his friends here in Minnesota, that he is no more of earth. The following letter from his father, Judge Foot, a prominent and well-known citizen of Ontario County, New York, brings the first intimation of this demise of one of Minnesota's best and bravest soldiers. The citizens of Red Wing, and of Goodhue County generally, where the Captain was best known, will feel,

upon reading the letter, that the patriotic and Christian father scarcely does justice to the memory of his accomplished and gallant son. We commend the letter, however, as a specimen of heroic patriotism that we have not seen excelled during the war: and hence we have solicited the privilege, and obtained the liberty of publishing it:

‘GENEVA, ONTARIO COUNTY, N. Y., March 15th, 1862.

‘*His Excellency Alexander Ramsay.*

‘SIR:—It is my painful duty to announce to you the death of my son, John Foot, late Captain of Company I, in the Second Regiment of Minnesota Volunteers. This deeply afflicting event occurred on the 13th inst. My son reached home on the 1st instant, in extreme ill health, caused by the exposure and fatigue of the winter’s campaign in Kentucky, and the battle of Mill Spring.

‘It is consolatory to me that his life has been of some service to our country. He was able to do his part with the brave regiment of which he was a member, at the battle of Mill Spring, where the lines of the rebels were first broken, and real success first initiated for the suppression of this most wicked rebellion. Had the life of my son been spared, his good education, high qualifications for his profession, sound moral principles and gentlemanly manners, would have made him an ornament to the bar and state of Minnesota. But God’s will be done. It seems ordered that this dear son’s life must be my contribution for the maintaining of our Government and institutions.

‘If the result sweeps the dreadful institution of slavery from our country, no sacrifice can hardly be counted as too dear.

‘Respectfully, your obedient servant,

‘SAMUEL A. FOOT.’”

From the Geneva Courier of March 19, 1862:

#### FUNERAL OF CAPTAIN JOHN FOOT, U. S. V.

“We little thought a few weeks since, when giving a brief notice of the three sons of Judge Foot in the public service, that we would be called to notice so soon the death and funeral of the eldest one. He was able to reach home, and died at his father’s on the 13th instant. The funeral services were held on Sunday afternoon last, in the Dutch Church of this village, and were conducted by the Rev. Dr. Wiley, the pastor of the church. Although the day was stormy, the church was crowded with a deeply interested audience. While all the services were appropriate and impressive, the sermon was especially so. The large audience listened to it with the deepest attention.”

## SERMON OF THE REV. DR. WILEY.

JOHN xi. 14, 15.—Then said Jesus unto them plainly, Lazarus is dead, and I am glad for your sake that I was not there, to the intent ye may believe.

Nothing is more natural in circumstances of recent bereavement than to wish that matters might have been, in some respects, differently arranged and disposed. We not only regret with profound and pungent sorrow the occurrence of death itself, the bereavement that has taken place, but we imagine that things might have been, with wisdom, differently ordered from what they were. In the sensitiveness of a true and tender affection, we are led to ask, with a jealous feeling, whether all has been done that might have been done to intercept the event that has taken place, and we indulge the imaginary idea, that if certain things had happened otherwise than as they did actually happen, the existing sorrow and bereavement might, by possibility, have been deferred or avoided. These are the feelings that naturally hang around us in contemplating the removal of our friends. They are the almost inseparable witness and attendant of a true and tender regret towards those that are called away from us by death. The very first words with which Martha greeted the Saviour on the occasion of the death of Lazarus, were "*Lord, if thou hadst been here, my brother had not died;*" attributing the death of her brother apparently to the inopportune or untimely absence of the Saviour. And so we are apt to say in similar circumstances—if such an event had not transpired, or if such a thing could have been ordained otherwise, the lamented issue or occurrence might have been different to what it is; as if the providence of God did not extend to all the circumstances of our personal bereavements and afflictions; as if Divine Wisdom did not order *all the antecedents* of death as well as the regretted event itself; as if it were not true of the Saviour's agency here in all its particulars, as well as in other departments of his action, that "*He doeth all things well.*" The narrative with which the text is connected is highly instructive and consolatory in this very respect. It presents the Saviour before us as having so intimate a relation to the sickness and death of Lazarus in all the circumstances of it, as to be highly soothing and tranquilizing to those that are called to similar trials. He distinctly anticipates the occurrence. He hovers near the scene where it transpired, and if he does not actually interpose to prevent it, it is for reasons of wisdom that are after made fully to appear. There are two thoughts in particular suggested by the narrative, on which I desire to dwell at the present time, as being in harmony with the present occasion; thoughts that are fitted to convey a deeply consolatory impression to the mind, under the sense of the recent loss and removal of endeared relatives and friends.

I. The first thought that is prompted by the narrative before us is, that *the Saviour is thoroughly cognizant of the sickness of our kindred and friends, and fully anticipates the issue and event of their disorders.*

We recognize this truth as a matter of theoretical conviction, as being



necessarily connected with the divine and superior nature which Christ possesses. He who, in common with the Father, notices the fall of the sparrow, and numbers the hairs of our heads, we may be sure, is not unapprized of what is transpiring in the way of sickness and death within the circles of our households.

But how much more vivid and distinct does this truth appear in the light of the simple narrative before us? We have here a living and practical exemplification of it. The sisters of Bethany, indeed, in their anxiety and solicitude, and also from a feeble faith in the Saviour's omniscience, send to inform the Master of the sickness of their brother. But it was an unnecessary and gratuitous errand, for Christ already knew of it. It was upon his mind as a matter of distinct and thoughtful contemplation. He notes with accuracy, as is apparent from the record itself, the progress of the disorder, and after the lapse of two days, He says to His disciples, with the quiet assurance of one whom nothing could surprise, "*Our friend Lazarus sleepeth, but I go that I may awake him out of sleep,*" and immediately bent His steps, that had hitherto lingered by the way, towards Judea, and towards the home of the afflicted household. Who can fail to see in this narrative a practical exemplification of the fact, that the Saviour is *intimately cognizant* of what transpires in the way of sickness, and suffering, and death, within the circle of our kindred. What was true of the family of Bethany is true of *all the families of Israel*. He who is the Great High Priest of our profession, who took part of our infirmities, who bore our sicknesses and carried our sorrows, we may be assured is not unmindful of the domestic troubles and afflictions of His people. He knows and notes the sicknesses of our kindred, and not a thing that transpires, not a circumstance that takes place, is hidden from the observation of His benignant eye. In the day of our calamity we may be ready to say with the Psalmist, "*Why standest thou afar off, O Lord? Why hidest thou thyself in time of trouble?*" and when death actually intervenes, we may exclaim with the sisters of Bethany, "*Lord, if thou hadst been here, my brother had not died.*" But these are either the natural expressions of a true and tender solicitude and affection, or they are the indications of a weak and imperfect faith that fails to recognize the ever-present Eye, the ever-watchful Providence, of our divine and benignant Lord and Master in all our affairs.

Yes, it is a most consolatory thought, that the Saviour knows perfectly the sickness and departure of our kindred in all their circumstances—in what is done and what is omitted, in what seems propitious and in what seems to be untoward and undesirable—in everything He is completely informed, and His benignant Providence is most intimately concerned.

II. The other prominent thought suggested by the narrative before us is, that *where the Saviour does not interpose to intercept the death of our relatives and friends, He omits to do so for the most wise and sufficient reasons*. He withholds His healing and restoring hand in the exercise of a true, though sometimes an inscrutable wisdom.

This is a very simple truth, but at the same time full of consolation to those who are able to realize its import. Ordinarily, it is too far out of our reach to be brought clearly within our comprehension and intelligence. We have to wait the developments and issues of eternity before we are able to get any palpable view of the wisdom of the divine dispensations, especially in the form of bereavement and affliction. But how clear and instructive does this truth appear in the light of the narrative before us. We see that Lazarus was permitted to die for reasons of divine wisdom, and these reasons are actually disclosed to us in the after-development of the narrative. It doubtless sounded strange to the disciples what our Saviour said to them in announcing, in anticipation, the death of Lazarus: "*Then said Jesus unto them plainly, Lazarus is dead, and I am glad for your sake that I was not there, to the intent ye may believe.*" It must have been a mystery, certainly, to them, how the Saviour could express himself thus cheerfully and confidently with regard to an occurrence whose natural aspect is usually one only of sorrow and distress. But when they followed him to the scene of the affliction itself, and witnessed what transpired at the tomb of Lazarus, when they saw the dead come forth at the word of Jesus, and a new halo of glory to surround the person of their Master, and a new attestation to authenticate and signalize the truth of His mission, when they beheld the earnest and pledge of the resurrection and future life in the resuscitation of the person of Lazarus—the brother of Bethany and the friend of Jesus—and saw the palpable proof of the power of Him who declared "*I am the resurrection and the life,*" then the mystery of Christ's words was explained, and the wisdom was vindicated of that dispensation that permitted the death of Lazarus.

It is doubtless true, that *we* are seldom permitted to see for ourselves the wisdom of such dispensations, *for we walk now by faith and not by sight*. But that wisdom is less *real* in all similar cases of death and bereavement. If Christ does not interpose to prevent the departure and removal of our kindred and friends, we know that he omits to do so for the wisest and best of reasons—reasons not now discernible to us, but that shall have their development at least in the future life.

We *know* that this is so; we have the pledge of it in the little that we are permitted to witness of the ways of Providence. We have an epitome and illustration of it in the narrative before us. It is as certain as that God's benignant Providence and the Saviour's gracious rule and dominion are connected with all that transpires amidst these earthly scenes.

These reflections, my brethren, are appropriate to be made in all the cases that occur of personal bereavement and domestic sorrow. They are especially suitable to be indulged in the instances of premature or early death, or where, in any respect, darkness and mystery seem to hang around the divine dispensation. It is soothing to think, in the hour of calamity and bereavement, that the Saviour knows our sorrows, that He is present and intimately acquainted with the sicknesses, and sufferings, and death of our friends,

and that He withholds His hand from their relief only in the exercise of a wisdom and benignity that will be made fully conspicuous at last.

This whole narrative, in fact, is full of consolation and support to the afflicted and bereaved, in the assurance and witness it gives of the presence, and nearness, and interest of the Saviour amidst our domestic sorrow. And when the finale of the whole is brought out to view, and the Saviour appears in His proper majesty and power as the resurrection and the life, what a glory crowns the scene! What a celestial light irradiates the whole! We seem to antedate the hour of the resurrection, and to have the future life already brought into being and reality in the resuscitation of the risen Lazarus from the dead.

I cannot be mistaken in supposing, that it is with more than usual sensations of sorrow and regret that we are met together on the present occasion. The shadow of death—premature and unanticipated death—is resting darkly upon our assembly. Youth cut off in its early promise and hopeful development, suddenly intercepted on the very threshold of active life—*parental hopes* long and fondly entertained and just bidding fair to be fully realized in a useful and honorable career, blighted and dissipated by the touch of death—the ties of kindred and the associations of friendship unexpectedly dissolved and broken asunder—the silent form of the dead—the subdued and thoughtful congregation of friends and spectators—these are the features that compose the present scene—these are the circumstances under which we are called together to-day.

Surely we need to take refuge in the persuasion of God's wise and benignant Providence as being concerned in our affairs. We need to recognize the presence and agency of the same Almighty Saviour, who, while on earth, mingled in the scenes of Bethany, and gave the most consolatory tokens of his concern and sympathy in our domestic sorrows.

#### HISTORY AND CHARACTER OF THE DECEASED.

As the death which has taken place has about it a character of public interest, from the personal relations of the deceased to the service of the country—as the proximate causes of it are to be traced directly, if not exclusively, to the perils and exposures of the camp and of the battle-field—it seems to be only appropriate and fitting that some specific reference should be made to the brief and highly honorable career of our departed friend, one among the many soldiers and active supporters of constitutional liberty in the land. Such a reference can hardly fail to be attended with a salutary lesson to the young, and to those that are emulous of public virtue.

Captain John Foot, of the United States Volunteer Army, whose obsequies we are now attending, was the eldest son of his esteemed parents the Hon. Samuel A. and Jane Campbell Foot, members of our church and community. He was born in the city of New York, in the year 1835, if I mistake not, but passed, with his parents, in his boyhood, to this place to reside.

Here he spent the earlier years of his life, preserving a reputable and unblemished character during this period, and conciliating the esteem and winning the regards of all who knew him, as well as his more immediate friends and companions. After suitable preliminary preparation, he became a member, I believe, of Williams' College, in Massachusetts; from which institution, in due time, he graduated with credit and success. After the completion of his academic course, he entered upon the study of the law, and was at length duly admitted as a member of the bar. He soon commenced the practice of the law in the city of New York, under very favorable auspices, and had begun already to realize, from his steady and successful labors in his profession, highly lucrative and profitable returns, when he was suddenly arrested by the hand of incipient disease, and compelled to relinquish the plans and prospects that had begun to open so auspiciously before him. He betook himself, under medical advice, to the western part of our country, in search of a propitious climate; and after a brief interval of time, spent, I think, mostly in Missouri, he finally settled in one of the prosperous and rising towns of Minnesota. Here he very rapidly regained his health, or seemed to do so, and arranged to commence anew the practice of the law, with flattering prospects of prosperity and success. But now a new career is suddenly opened before him, and with it a new and unusual interest attaches itself to his personal history. The standard of rebellion had been lifted up in the land. Treason and insubordination, without even plausible grounds to support them, were aiming to subvert the Constitution of our fathers, and to involve everything in reckless confusion and anarchy. The call of the Government sounded out, summoning to its aid the spontaneous support of patriot volunteers, and thousands were flocking to uphold the imperilled interests of public order, and to vindicate the time-honored, but insulted, flag of the Union. It was a call not to be resisted by one who had been carefully educated in the principles of constitutional liberty and order, and who inherited something of the spirit of the Fathers of the Revolution. Young Foot felt and responded to the patriotic and generous impulse. With no reasons of personal need or other constraint to operate upon his mind, with prudential considerations arising out of a scarcely re-established health to check and restrain him, he yet seemed to have regarded the call of the country as imperative and obligatory. With no other motives, apparently, than such as were supplied by the ardor of youthful enterprise and the promptings of a patriotic spirit, he entered the service of the country as a captain of volunteers; and when his regiment was ordered to Kentucky, the scene at that time of most perilous civil conflict and commotion, he promptly followed with it the fortunes of the war. I need not describe to you the public features of that campaign. They are so recent as to be entirely familiar to you all. The series of brilliant successes that have crowned the arms of the Union in that section of the country began with the battle of Mill Spring, in which the regiment to which young Foot belonged bore a most gallant and conspicuous part. With the successful issue of that first conflict on the soil

of Kentucky, commenced the happy turn of events that seem destined to culminate, ere long, in the complete restoration of the power of the Union. But, in the meantime, the personal and private experience of Captain Foot discloses a sad but most heroic record, that remains to be briefly told.

The humidity of the climate, the exposures of the camp, and the toils of the march, began to show their effects very sensibly upon his feeble constitution, and it very soon became apparent to him that his health was likely to be totally undermined. But how could he retire from the service at this most critical juncture? How could prudential considerations be listened to when the enemy was just at hand? Every thought of self, every considerate regard to health, had to give way to the point of honor, and to the impulse of patriotism. Think of the quiet and uncomplaining heroism that could still go forward in such circumstances as these! Think of the weary and protracted march, the broken rest, the unavoidable and perpetual exposure to wind and weather, with an enfeebled and manifestly sinking constitution! Think of the excitement and tumult of the battle that ensued, and of the word of military command still continuing to issue firmly and steadily from attenuated lips, and from a body already weakened and wasted by the ravages of disease. It was not until all these things were gone through, and the army returned successful and victorious to the camp, that our youthful soldier felt himself at liberty to turn his attention to himself. Oh! is there not a record here of unobtrusive and silent heroism, that demands to be known and to be appreciated? What can we do less in regard to the youthful volunteers that have entered the service of the country at the present imminent crisis, than to bear them upon our prayers to the throne of grace while they live, and to preserve some grateful memorial of their patriotism and sacrifices when they come to die.

The sequel of our personal narrative can be very briefly told. It is told, indeed, more eloquently than words can do it, in the silent remains that lie before us. Captain Foot returned to Minnesota, under instructions to recruit his regiment, with the faint hope that his declining health might yet be retrieved. This hope was, however, soon extinguished, and, unwilling to be a burden to a cause which he was no longer able to serve, he at once offered to relinquish his commission, and with all the expedition his failing strength permitted, he betook himself to the home and refuge of his early childhood; and here a few days of rapid decline terminated a life already shattered and broken by the severities of the recent campaign. He expired amid the solaces and supports of early friendship and love, leaving behind him, to his surviving kindred, the sad but proud recollection, that he spent his last strength, firmly and faithfully, in the service of the country. His earthly record is, that he lived an unblemished life, and died virtually and really a voluntary sacrifice to the noble cause of constitutional freedom and order. His religious record, besides embracing precious reminiscences, appreciable only to the eye and perception of domestic and private love, is, that he died a child of the baptismal covenant, and a child of parental prayer and hope,



giving, as his last utterance, an affirmative response to the proffers and promises of a Saviour's grace, presented to him by the lips of maternal affection and faith.

"How blest are they whose transient years,  
 Pass like an evening meteor's flight;  
 Not dark with guilt, nor dim with tears,  
 Whose course is short, unclouded, bright!"

#### CONCLUSION.

I cannot conclude without a brief admonition to the young men who are here present. I would say in a single word, Young men, *ennoble life by honorable action!* Remember that it is not the length of life, but the faithful fulfillment of its high duties, that is the true and real ground of felicitation.

"Nor love thy life, nor hate, but what thou livest,  
*Live well*, how long or short permit by heaven."

I would say especially—make clear, and bright, and legible, *your religious record*. Be soldiers of the country if need be, in her present urgent perils: but above all, be soldiers of the cross. The kingdom of Christ shall survive all other kingdoms. It shall conquer death and the grave. It has brilliant crowns and unfading laurels for all its true and loyal subjects.

No. LV.—VOL. 1, p. 356.

#### *Death and Funeral of Samuel C. Foot, U. S. A.*

Only three months have passed since we gave a brief account of the funeral of the eldest son of Judge Foot, and now we are to give a similar account of the funeral of his second son, Samuel Campbell Foot, late acting master's mate in the United States navy. We have heretofore mentioned the creditable manner in which he acquitted himself in the battle at Roanoke Island, as signal officer on the gunboat "Stars and Stripes." He discharged a like duty equally well in the battle at Newbern. After that battle he was transferred to the more responsible position of executive officer on the U. S. armed steamer Whitehead, which was stationed several weeks near Elizabeth City, N. C., in the vicinity of the canal and Dismal Swamp. The malaria of that region gave our young friend a typhoid fever. He was sent to

the naval hospital at Newbern, where he was very ill for some weeks. There his father reached him, and started homeward with him. He improved on the journey, and arrived at the residence of his aunt, Miss Campbell, at Millburn, N. J., a few miles from New York, where his mother was waiting to receive him. He seemed better, and his recovery was confidently expected. But after a few days, his disease took an unfavorable turn, and he expired on Thursday, the 12th inst., on the same day of the week and but three months from the day on which his elder brother died. His funeral took place last Sunday afternoon, on the same day and very nearly in the same manner that of his brother had on the 16th day of March last. His remains were taken to the Reformed Dutch Church; the pastor, Dr. Wiley, conducted the services, which were strikingly appropriate, and delivered an impressive sermon to a crowded house.

We give below an outline of the sermon of Dr. Wiley, with the memorial of the deceased more at large:

Eccl. ix. 10.—Whatsoever thy hand findeth to do, do *it* with thy might; for there is no work, nor device, nor knowledge, nor wisdom, in the grave whither thou goest.

The discourse consisted mainly of an exposition of the sentiment of the text, contemplating death chiefly as *putting a period to all active and useful exertion*. It embraced three principal points:

I. Death extinguishes all *our active powers*. All our active faculties, so far at least as relates to present visible scenes, are extinguished in the grave.

II. Death puts a period to *our personal probation on the earth*. It intercepts all active exertion for our personal spiritual welfare.

III. Death cuts off all opportunity *for communicating good to others*. It terminates all efforts of benevolence and useful activity. After dwelling on these points at large and making a practical application of them, the preacher proceeded as follows:

The death which has now occurred and which is the more immediate occasion of these solemnities, has about it some features of touching and mournful interest. Just three months ago we were assembled in this place under similar circumstances, to perform the funeral obsequies of a brother of the deceased, and to bear a public testimony to his youthful virtues and his early sacrifice. And now to-day, in the inscrutable Providence of God, we meet together again to perform the same functions and to bear a similar tribute to the deceased, an endeared member of the same afflicted household. It is indeed a mournful duty and office in which we are engaged, but one nevertheless that is right and proper in itself—a public testimony and respect

that we very cheerfully render. We hold it to be incumbent, and imperative indeed, in these days of our country's perils, to bear in honorable remembrance the examples of youthful patriotism, and to preserve their memorial—to cherish a grateful esteem of those especially, who have fallen a sacrifice to the noble cause of constitutional liberty and order.

Samuel Campbell Foot was the second son of Samuel A. and Jane Campbell Foot, well known and highly esteemed residents of our village. He was born in the city of New York, on the 15th of June, 1836; so by a very striking coincidence, the anniversary of his birth proves to be also the day of his burial. He came to this place with his parents while very young, and here grew up to early manhood, discovering pleasing natural qualities of mind and character, and displaying a cheerful temperament, and a lively social disposition, that made his companionship to be desirable and attractive. He seemed to have been from early childhood more of an active than of a contemplative or studious turn of mind; and with the progress of time, as the natural consequence perhaps of this disposition, there came to be developed something of a distinct tendency and desire towards maritime life and the naval service of the country. This disposition was not resisted by his parents, and he was in due time appointed a midshipman and entered the naval academy at Annapolis, where he spent some time in studies preliminary to naval life. Before the completion of these studies, he resigned his position in the navy on the advice of his father, and two years afterwards entered the merchant service. And it was on his return from a voyage in September last, I believe, that he entered the public service of the country, the strange rebellion against the Government having in the meantime developed itself in vast and startling proportions. He was immediately appointed to the post of master's mate on board the gunboat *Stars and Stripes*, a public vessel engaged at that time in conjunction with others in blockading the coast of North Carolina off Hatteras Inlet. Here he remained in the regular and exemplary discharge of his duties, until the great expedition under General Burnside was organized to operate in North Carolina, one of the most imposing naval armaments that ever occurred in the history of war. With this expedition the vessel to which our young friend was attached, the *Stars and Stripes*, became associated at Hatteras, and she proceeded with the expedition to the brilliant and successful attack on Roanoke Island, where she bore a distinguished and conspicuous part as the *flag-ship* of one of the divisions of the assailing force. In this affair young Foot was entrusted with a very important function, and one that demanded great coolness and intrepidity as well as a clear and quick perception and discernment. He was the signal-officer on board of his vessel during the attack, and performed his part with great accuracy, and entire satisfaction. He was present also on board the same vessel in the successful attack that was made on Newbern, resulting in the capture of the city, and was engaged with the other gunboats in operations against the forts and redoubts along the river, while the land forces were assailing the entrenchments of the enemy. His

services on these occasions were duly appreciated by his superiors, and as a testimony of this approval and esteem by them, he was assigned to a new and important duty. He was detached from his vessel and put on board the *Whitehead*, and in conjunction with another vessel was sent on a special expedition to Elizabeth City, and to the Dismal Swamp Canal, with a view of intercepting the anticipated approach of the enemy through the canal into Albemarle Sound; and it was while engaged in this unfortunate service and exposed to the malaria of that region that he contracted the disorder that has had in its final effects this present fatal termination. He was found by the surgeon of the squadron in his berth laboring under a raging fever, and by his orders was transferred from this unhealthy region to the hospital at Newbern. Here he remained for some days experiencing some relief from the violence of his disorder, and gradually improving in strength until on the arrival of his father at Newbern, or in a short time after, he was found to be in a condition to be removed North. The removal was made with the hope and promise that it might have an invigorating effect on his enfeebled system, and for a time it did have this effect in a very visible degree, so as to awaken the pleasing expectation that a full recovery might be effected. But in consequence of a new turn and development of his disorder, such as sometimes occurs in fevers of this description, these incipient hopes were soon overclouded, and it became apparent in a short time, that his feeble frame would not be able to rally. His strength from this time gradually failed, and he sank at last into the embraces of death, with the calm and intelligent consciousness that his life, without regret, had been surrendered to his country's service, in her time of utmost need. He died at Millburn, New Jersey, soothed and supported by the assiduities of a mother's care, and imbibing in his latest moments the sensible comforts of a mother's faith.

There is something sacred about the latest experiences of a departed relative or friend, that seems to forbid a full exposure to the public eye. Utterances and feelings that are poured into the ear of earthly friendship and love, cannot be presented in their details to the unappreciative perceptions and feelings of the world at large. I cannot, however, forbear so far to lift the veil from the closing hours of our departed friend, as to disclose to you the Christian sentiments and hopes that cheered and brightened his latest moments. A child of God's gracious covenant, and carefully instructed from early youth in the principles of the Christian faith, it seemed that these instructions, however intercepted during the thoughtless periods of youth and strength, were destined to bear distinct and visible fruits during the quiet and serious hours of his last sickness. Even the songs of Zion with which he had been familiarized from childhood, recurred to him with a beautiful significancy, and were invested with a spiritual meaning never before discerned. Repeatedly did he join with his mother in singing sacred hymns, hymns expressing the various phases of Christian sentiment, faith, patience, and hope. "There is a fountain filled with blood." "Jesus, lover of my soul." "What is life, 'tis all a vapor." Repeatedly, I say, did he join

with his mother in singing these songs, and when, from failing articulation, he could no longer distinctly speak the words themselves, he still continued to keep the air, as if his mind was tenacious of the sacred sentiment they contained. When asked if he loved the Saviour, he replied, "Yes, I do love the Lord Jesus Christ with all my heart, and though I have been a great sinner, I feel sure that He has forgiven my sins." He said also that he loved Christ's Sermon on the Mount, and asked to have it read to him repeatedly, and during the last two days of his life he constantly repeated the prayer, "God be merciful to me, a sinner, for Jesus Christ's sake." And with such sentiments and words as these lingering on his lips, did our young friend gently quit his hold of life. Oh! who shall say that these things are not the faithful instructions of earlier years blossoming at the latest moment into precious fruit! And who shall say that the life of our young friend, though brief and transient in its duration, is not redeemed by the noble devotion of his later days to his country's cause, and by the distinct testimony and witness of a Christian death!—*Geneva Courier*, Wednesday, June 18, 1862.

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No. LVI.—VOL. 1, p. 358.

*The Pacific Railroad and the Contrabands.*

The great problem which now occupies the public mind, and which this country will soon be compelled to solve, is, What disposition shall be made of the persons held to service by the laws of the rebel states, and who have already been, and will hereafter be, discharged from that service by reason of the rebellion? In other words, What shall be done with the slaves of the rebels? A large number have already become free by a mutual abandonment of the relation of master and slave by both masters and slaves, and by the operation of the law of Congress passed at the late extra session, giving liberty to all slaves who were used by or with the assent of their masters in aiding the rebellion. Much larger numbers will hereafter become free by operation of the same causes, and still larger numbers under the law which Congress will soon pass (for the loyal citizens of this country almost unanimously demand its passage), liberating the slaves of all rebels.

What shall this humane, Christian, and benevolent nation do with this immense number of dependent, docile, but immortal



human beings, is the great question. It can only be answered by every citizen giving to it his best thoughts and deepest consideration, and by presenting to the public for mature examination every project which appears feasible and practicable. Influenced by these views, the subscriber suggests the employment of these freedmen, appropriately called contrabands, in constructing the great national work of a railway to the Pacific.

The subscriber will not attempt, in a short communication like this, to point out the best mode in which their labor could be applied to this object. There are various ways in which it might be applied beneficially to the contrabands and to the nation. All over eighteen years of age might be apprenticed to the superintendent or superintendents of the work, for three or five years, at a given rate of compensation, to be paid in part in clothes and food for himself and family, if he had one, during the apprenticeship, and the balance at the close of it, with the grant of a quarter-section of land, either along the railroad or in a territory acquired by the Government for their occupation; this payment at the close of the apprenticeship to depend on faithful service during it. This would stimulate the contraband to faithful service—give him a farm to cultivate, and some money to begin life with on his own account.

This may not be the best mode which could be devised. Those acquainted with the mode now in use in the rebel states of hiring slave labor, may point out a better one. But in some way surely the labor of these contrabands might be applied to the construction of this great national and useful work advantageously to the country and beneficially to them. It is found already, by agents of the Government at Port Royal, that they are ready and faithful laborers for reasonable compensation. What a blessing this rebellion will prove to this country, if it shall culminate in the cultivation of this continent by Christian freemen!

A LOYAL CITIZEN.

No. LVII.—VOL. 1, p. 358.

*Location of Military Camp.*

GENEVA, Monday, July 21, 1862.

COLONEL SHERRILL:

After stating to you, as I did on Saturday last, the objections which in my opinion existed to the selection of the race-course as a military depot for the regiment to be raised in this vicinity, I regarded my duty in the matter as discharged, and thought I should neither say or do anything more on the subject, especially as my motives might be misunderstood by those whose opinions I value. But further reflection shows me, that the race-course, with the license to sell liquor on it, which the owner has, is objectionable as a military depot, for several reasons in addition to those I stated to you on Saturday, and I am too deeply interested and too anxious for raising promptly a good regiment in this vicinity, to allow any misconception of motives to deter me from taking every measure which in my opinion will promote that object.

The objections I stated to you on Saturday were three :

1. The deficiency of water, there being no available stream except that issuing from White Spring, and only the surplus of that remaining after the village was supplied. And some years there was even a deficiency in supplying the village.

2. All the race-course, except a small part at the west end, is low ground, and wet and damp, especially in moist weather.

3. The owner of the course has a license to sell liquor upon it, and I pointed out the injurious effect *that* would have on both officers and men—and I suggested, that the depot should be at some suitable place on the bank of the lake, so that there would be not only a plenty of water for the use of the camp, but so that it could be approached by boats and save the expense of transportation of supplies by land.

My further reflection has satisfied me that there are the following additional objections to the selection of the race-course as the depot :

1. Parents and friends of young men of worth and respecta-

bility will be unwilling to have their sons and young friends lie in camp for weeks in the immediate vicinity of a dram shop. While this consideration will deter many of the right class of young men from entering your regiment, it will bring into it many of a different class, whose constitutions, impaired by dissipation, will scarcely stand the first march.

2. The class of men in this village and vicinity, whose means and influence are an important element in raising a good regiment, are not friends or supporters of the race-course, and many of them were earnest remonstrants against granting a license to the owner of it to sell liquor.

The effect of the selection is to sustain the race-course and the liquor-bar upon it; for the owner is to receive fifty dollars per month for the use of the ground, which will probably be wanted for a year at least, making \$600, and the profits of his bar will probably be three times that sum.

When, therefore, gentlemen are called upon for contributions to aid in raising the regiment, or have sons or young friends whom they would otherwise desire to have enlist, they will naturally hesitate as to both. While if the camp is located at some suitable place out of the village, where health, absence of temptation, and access by water are sought, there will be no impediments, and all will join heartily in raising the regiment.

Respectfully, your ob't serv't,

SAM'L A. FOOT.

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No. LVIII.—VOL. 1, p. 359.

*The President's Proclamation and Free White Labor.*

Many of our laboring men believe, that if the slaves in the southern states are liberated under the President's proclamation, they will rush in such numbers into the northern and western free states, as not only to reduce the price of labor, but fill those states with colored paupers. This is a great mistake, and directly the reverse will be the case. Indeed, the surest and best way to clear the northern and western free states of colored people, is

to abolish slavery in the southern states and make them also free states. A little reflection will show this to be so.

The colored people now fly from the slave states to the free states and to Canada, not because they prefer to live in those states and in Canada, but because they desire freedom, and can only obtain and secure it by flying from the slave states into those that are free. But let the southern states once become free states, and the colored men and women be as sure of their freedom there as they are now in the free states and in Canada, and not only will those that are now there remain, but those who have fled from there into the free states and Canada will return to their former homes.

Many reasons will induce the colored people who are now there to remain, and those who have fled to return.

1st. The climate in the southern states is better suited to their constitutions. The negro is happier, healthier, and enjoys life more in a warm climate than in a cold one.

2d. Many of them have relatives and friends in the southern states. Those already there will not wish to leave them, and those away will wish to return and join them.

3d. When slavery is abolished and freedom firmly established in the southern states, the great mass of the colored people will be there. Those states are the natural place for them. The negro race are remarkably gregarious, and where the great mass of them are, those scattered about the country will naturally go.

4th. They are attached to the places where they were born and brought up, and although love of liberty is stronger than local attachments, and they fly from places dear to them for the sake of liberty, yet when they can enjoy their liberty in those places which are dear to them, they will certainly return to them.

Every white laboring man in the free states, who rightly understands his true interest, will support the President's proclamation of emancipation in the slave states; and so too will every white citizen in the free states who does not wish to live side by side with the negro race.

Party leaders who care more for the success of their party and the offices which such success will give them, than their country,

are endeavoring to organize a party in opposition to the President and his proclamation of freedom, under the name of Democracy; and are calling on the laboring classes to vote for their candidates, on the ground that the proclamation will flood the free states with colored laborers and paupers. Intelligent laboring men will readily see how far that is from the truth, and how clearly it is for their interest and for the peace and happiness of the country to support the President and his proclamation.—*The Geneva Courier*, Wednesday, October 29, 1862.

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No. LIX.—VOL. 1, p. 359.

*Abolition of Slavery.*

GENEVA, Dec. 15, 1862.

*Mr. President.*

DEAR SIR: My three eldest sons responded to your call last year for volunteers to suppress the insurrection. The lives of the two eldest have been yielded in the contest. They were dear and dutiful sons, as is also the third one, who is still in service. This priceless contribution which I have been called to make to sustain our institutions and the integrity of our country, entitle me, I respectfully submit, to say to the President of my choice, that it is perfectly clear to my mind that the rebellion cannot be effectually suppressed, and we become a united people, unless slavery is destroyed; and that I hope and trust that on New-Year's day I shall be allowed to read your proclamation designating the states and parts of states in rebellion, that in them slavery may be abolished in accordance with your proclamation of the 22d of September last. If I can read that proclamation, I shall feel that the lives of my dear sons have not been sacrificed in vain.

Respectfully yours,

SAMUEL A. FOOT.



No. LX.—Vol. 1, p. 362.

*Constitutionality of Legal Tender Notes.*

## COURT OF APPEALS.

*Causes involving the Validity of the Legal Tender Treasury Notes. Points and Propositions presented by Samuel A. Foot, on behalf of the Treasury Department of the United States, sustaining the Validity of the Legal Tender Treasury Notes, and in addition to those presented on the same side by other counsel.*

I. The condition and pecuniary wants of the country in February, 1862, when the act of Congress in question was passed, and which are presented and fully exhibited in the national legislation of which this court must take judicial notice, show, if not the absolute necessity, certainly the wisdom and propriety of a paper currency, and render it clear to every candid and intelligent mind, that Congress did not adopt the measure in question inconsiderately or wantonly, but under a high sense of duty and conscientious belief that it was the safest, surest, and best way of exercising the power which they clearly possessed, and discharging the duty which was manifest and imperative, to provide means to meet and satisfy the pecuniary wants of the country.\*

II. From the 12th day of April, 1861, when the rebels attacked Fort Sumter, a war *de facto*, and from the 13th day of July of the same year, when the act of Congress was passed recognizing and providing for it, a war *de jure*, existed between the rebels and the United States, and continues to the present time. The unparalleled character and gigantic proportions of this war, not only fully appear in the acts of Congress, but are known to all men.†

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\* In addition to the facts of which the court will take judicial notice, the opinions of several eminent bankers are stated in the Appendix to these points.

† See opinions of the justices of the Supreme Court of the United States in the prize cases lately decided. (Am. Law Register of April last, p. 335.)

Money is rightfully said to be "the sinews of war." It is as necessary to carry it on as arms; and it is as clearly the duty, and within the *power* of Congress, to provide the one as the other; indeed, the arms cannot be provided until the money has been.

III. It being then as clearly within the *power*, as it is the duty, of Congress to provide money to carry on the war; and it being undisputed, indeed conceded by the counsel who oppose, and the judges who decide against, the validity of the notes in question, that Congress has power to authorize the issue of treasury notes as a circulating medium, it is manifest that Congress has the power to engraft on them such qualities and features as in their judgment will render them available for the end in view. The power to create certainly includes the power to mould and shape, and adapt to the end.

IV. An examination and analysis of the arguments of the counsel, and of the opinions of the judges, adverse to the validity of the notes under consideration, will show that they are all founded directly or indirectly on the fact, that the act obliges creditors to take in satisfaction of their debts a currency of less value than a specie currency—or, in other words, that the act impairs the obligation of contracts.

If the currency created by the act was equal in value to specie, and they were convertible into each other at par, every objection that is now put forth to the validity of the notes would fall to the ground, and yet the notes would be just as invalid as they now are—that is, the authority to issue them would still be wanting. Hence, their validity does not, and cannot, depend on their relative value to specie.

This conclusion is fortified not only, but incontrovertibly established, by the proposition, that Congress may, if in their wisdom they deem it proper under the powers they possess, pass laws impairing the obligation of contracts. This proposition is not only true on the Constitution itself, but has been judicially determined.\*

V. The General Government, within the limits of the portion

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\* *Evans vs. Eaton*, 1 Peters' Circuit Court Reports, p. 322. Opinion of Court, p. 337.

of sovereign power which the people, who are the source of all human power, have given to it, is absolute, and unrestricted in the exercise of that power, except by express limitations made by the people, and declared in the instrument by which they granted the power, viz., the Constitution.

Among the powers granted to the General Government, and exclusively vested in it, and denied to the states, is the power to create, establish, modify, alter, and change the currency of the country. And while power is specially given over a specie currency, the Government is not restricted in the exercise of its full and exclusive power over currency in general.

VI. Every government, and ours as well as others, has and must have the inherent right and power of self-preservation. That our Government is vested with only a portion of sovereign power does not modify or change the inherent right of self-preservation. It is a Government complete in itself, self-sustaining, powerful, and absolute within its range of unrestricted sovereignty. The inherent right of self-preservation, and which is a part of its very existence, is incorporated in it.

While under this right and power of self-preservation, no latitudinarian doctrine or measures of doubtful necessity or expediency should be adopted or sustained; yet when its existence is plainly and powerfully assailed, it may rightfully and constitutionally adopt any reasonable, natural, expedient, or proper measure tending and conducive to its preservation, though such measure may not fall within any specific and express power given to it.

If the measure under discussion be tested by this rule and no other, this high tribunal will hesitate to declare it unconstitutional; and if the court hesitates on that question, the settled rule requires it to sustain the law.

SAM'L A. FOOT,

*Counsel for U. S. Treasury Department.*

ALBANY, June 26, 1863.

## APPENDIX.

ALBANY, June 22, 1863.

SIR :—Being engaged in preparing for an argument in the Court of Appeals upon the legal-tender question, and knowing the weight which always attaches to your views upon questions of finance, I take the liberty of asking you to inform me—

*First.* Whether in the present rebellion it would have been possible for the Government to raise in coin all the money necessary to support and maintain its fleet and armies.

*Secondly.* If an issue of paper by the Government was necessary, could its credit have been maintained through all its enormous expenditures against the efforts of disloyal persons here and enemies abroad, without giving the paper thus issued the character of lawful money and a legal tender.

Your obedient servant,

SAM'L A. FOOT.\*

JOHN A. STEVENS, Esq., *President, &c.*,

BANK OF COMMERCE IN NEW YORK, June 24, 1863.

SIR :—I beg to acknowledge receipt of your communication under date 23d instant, stating that you are preparing an argument in the Court of Appeals upon the legal-tender question, and asking my opinion upon two points—

1st. Whether in the present rebellion it would have been possible for the Government to raise in coin all the money necessary to support and maintain its fleets and armies ?

2d. If an issue of paper by the Government were necessary, could its credit have been maintained through all its expenditures against the efforts of disloyal persons here and enemies abroad, without giving the paper thus issued the character of lawful money and a legal tender ?

I take it for granted that you do not seek for an argument from me to sustain the opinions which I may entertain upon this subject, but only desire to know what they are ; and I therefore, in answer to your first inquiry, at once unqualifiedly declare my belief, that it was not possible for the Government to raise in coin the funds necessary for a vigorous prosecution of the war, and that it is not practicable for it to do so now ; and further, that a return to specie payments cannot take place till after its termination. These views I think are now almost universally entertained by financial men here.

To your second inquiry, I beg leave to state briefly my conviction, that

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\* A similar letter was addressed to each of the gentlemen whose answers are given.

no issue of paper by the Government, not redeemable in coin, would have acquired or maintained credit, or had circulation as money, unless made lawful money and legal tender. To what uses could such an issue have been applied? It would certainly not have been voluntarily received in payment of debt or for purchases, and would not have passed from hand to hand in the daily transactions of life. It would not have been money.

The measure, adopted from necessity by the Government, now furnishes a national currency, and the opinion more and more prevails among practical and able observers, that with so large and increasing a national debt, and a system of heavy internal taxation, the national finances can hardly be carried along successfully without a national currency. Now as the return to specie payments must be deferred till the rebellion is put down, till then the currency, it would seem, must remain a legal tender—national paper—to be made redeemable in coin, I trust, at the earliest possible time.

It is greatly to be desired, therefore, that no conflict of jurisdiction, or real or supposed local advantages anywhere, will delay or defeat the establishment, on a firm basis, of a sound, stable, and uniform national currency.

I remain, sir, your obedient servant,

JNO. A. STEVENS.

SAMUEL A. FOOT, Esq.,

Delavan House, Albany, N. Y.

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METROPOLITAN BANK, NEW YORK, *June 24, 1863.*

Hon. SAMUEL A. FOOT, Albany.

DEAR SIR:—I have your favor of the 22d instant, in which you ask my opinion in regard to legal-tender notes issued by the authority of the United States Government.

Although my opinion can be of no importance to you, in a legal point of view, yet as a practical business man, I am ready and willing to state my impressions on the subject.

There were various causes which necessitated the issue of legal-tender notes; or, more correctly, the suspension of specie payments, brought about by the action of the Government, left the United States no alternative but the issue of paper money.

For the following, among other reasons:

The withdrawal of the precious metals from the business of the country; the enhanced prices in commodities; the shortening of credits throughout our business community; the large demand for currency to carry on the war;—all these caused a demand, and a *necessity*, for an increased volume of currency far beyond the power of banks to supply (without danger of great depreciation), and a demand largely in excess of any ever known in this country before.

After the general suspension of specie payments, this great want (in my



judgment) could be supplied only in one way, by the issues of the Government, made legal tender or lawful money.

Thus far the issue of such notes has not exceeded the legitimate demand. Indeed, the wants of the Government and of the business community have not been fully supplied. Those notes have scarcely filled up the vacuum caused by the hoarding up of gold and silver, by the increased prices, by the shortening of credits, business being now largely done for cash, by the demand in our western country, which had been emptied of currency by the failure of their local banks about two years ago, and by the increased activity in our manufacturing, mercantile, mechanical, and commercial circles.

As to the great question, the inherent right of the United States Government to sustain itself by the exercise in time of war of all powers within its reach, whether by the issue of bonds, treasury notes, promises to pay at a future day, certain or uncertain, or promises to fund in interest-bearing obligations, notes payable on demand,—that is a question for you, and such as you, to expound.

I may be excused, however, for saying, that the National Government, which embraces all interests, corporate, state, and individual, and is vital to the welfare alike of person and property, can hardly be presumed to be deficient in the right, the natural right, of self-preservation, when the state and the individual possesses such right by authority older than written constitutions or parchment.

Most respectfully, your obedient servant,

J. E. WILLIAMS, *President.*

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ALBANY, *June 23, 1863.*

The Hon. SAM'L A. FOOT.

SIR:—In answer to your two inquiries of this date, I reply most decidedly in the negative.

In my judgment, neither our own Government, nor the Governments of all Europe combined, could have raised in coin the amount of money necessary to support and maintain our fleets and armies during the present rebellion. An issue of paper money was, therefore, an essential element of national existence; and the value of the money thus issued depended entirely upon its character as a legal tender.

If the Government cannot constitutionally issue legal-tender notes, then it lacks the inherent right of self-defense and self-preservation.

I have the honor to be, your ob't serv't,

THOMAS W. OLCOTT.

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CORN EXCHANGE BANK, NEW YORK, *June 23, 1863.*

SIR:—Without attaching weight to any opinions I may give, I consider it my duty to reply to your inquiries under date of June 22d instant.

To inquiry first I reply: It would not have been possible for the Government to raise in coin all the money necessary to support and maintain its fleets and armies during the present rebellion. This opinion I early expressed to Secretary Chase.

To inquiry second I reply: The issue of Government paper becoming a necessity, the making it a legal tender became also a necessity, both to the Government and the people.

I am, sir, respectfully, your ob't serv't,

E. W. DUNHAM.

PHENIX BANK, NEW YORK, *June 24, 1863.*

SAMUEL A. FOOT, Esq., Albany.

DEAR SIR:—Your letter of the 22d inst. duly received, and I hasten to reply to your inquiries. In answer to your first question, I do not hesitate to say, that it would not have been possible for the Government to carry on the present war, meeting all its obligations in specie.

In regard to your second question, I would say, that without the legal-tender clause in the paper issued by the Government, I do not believe that its credit could have been maintained.

Yours truly,

T. TILESTON.

No. LXI.—VOL. 1, p. 362.

*Attainder of Treason and Confiscation of the Property  
of Rebels.*

*Hon. S. A. Foot:*

DEAR SIR: Some few days since, while in conversation with you on the all-absorbing topic of the day—the state and prospects of our country—I expressed my doubts, in which you concurred, whether the opinion, which is so commonly entertained, whether, under our Constitution, Congress has a right to confiscate rebel property for anything more than the lifetime of the rebel who is the owner of it, is correct. You encouraged me to investigate the subject; made some valuable suggestions; and very kindly placed at my disposal the ample resources of your library. I have, therefore, incorporated the results of my investi-

gation into a letter, which I now take the liberty of addressing to you. This I do with the assurance that the views I have presented accord, in general, with your own, and with the hope that it may be of interest to others besides ourselves, and of service to our common country.

This subject is important in more than one point of view. Not only does it come before us as a part of the means of putting down the rebellion and punishing the rebels, but it is important in reference to the immense national debt which we shall have to pay. This debt will, in all its items, amount to more than a thousand millions of dollars. By the last census I see that the "actual value" of property in the rebel states is \$4,708,252,215—say three billions, exclusive of slaves—including Western Virginia, but not including any portions of Delaware, Maryland, Kentucky, Tennessee, or Missouri. A portion of this Western Virginia should not, of course, be included in any confiscation; but there is more than property enough in the other states, viz., Delaware, Maryland, Kentucky, Tennessee, and Missouri, which is held by rebels, and is liable to confiscation, to make up for all that is held by loyal men in the states of Virginia, North Carolina, South Carolina, Florida, Georgia, Alabama, Mississippi, Louisiana, Texas, and Arkansas, which I have included in the above amount. If, now, this property may be confiscated and sold to pay the debt of this war, it will go a good way, at least, towards paying the whole of it. If it may not be confiscated for anything more than the life of its present owners, but very little can ever be realized out of it, and this enormous debt must fall with crushing weight upon the wealth and the industry of our country.

The doubt concerning the right to confiscate the property of those who are now in rebellion, to the use of the United States, arises chiefly from words which occur in Art. 3, Sec. 3, of the Constitution, thus: "*But no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.*" These words seem to be quite explicit. They are, however, a little peculiar, and such as that their meaning is not very obvious without a little explanation. The most natural and proper recourse in such cases is to the decisions of United States Courts, and failing there, to the debates in the convention

that framed the Constitution, or the contemporaneous explanations given by those who introduced the language into the Constitution.

But there have been no decisions in the United States courts, or in any others, so far as I can find. The act of Congress passed April 30th, 1790, providing for the punishment of treason, does not include forfeiture of property as a part of the punishment; and all the cases in our courts have been under that statute in such a way as not to raise the question of the meaning of this clause of the Constitution for adjudication.

On referring to the records of the debates, published by Eliot, as well as to "The Madison Papers," it does not appear that these words of the Constitution were discussed at all. It is true that Story, in his Commentaries on the Constitution, says, in speaking of these very words, "*forfeiture except during the life of the person attainted*," that the clause was fully discussed, etc. But on referring to the authorities which he cites, I see that the preceding clause, defining treason, was fully discussed, and amendments proposed—some of them adopted, others rejected, and the reasons given for their adoption or rejection. But his language is rather loose, and it does not appear that anything was said as to the precise meaning of the words "*corruption of blood*," or "*forfeiture except during the life of the person attainted*," or what was the intention of the framers of the Constitution in inserting them. "The Federalist," also, is silent on this precise point.

And so, too, on referring to the reports of the debates in Congress, on the passage of the law of 1790, already referred to, not a word appears to have been said about "*corruption of blood*" or "*forfeiture*" as they occur in the Constitution, limiting the effects of attainder; although there were in that Congress men who had taken a prominent part in framing the Constitution. The bill appears to have been perfected in the committee of the Senate, and was passed as reported. Of course we have no means of knowing what was said in the committee.

Perhaps this failure of contemporary exposition or construction, as evidence of the true sense in which the Constitution, in this particular case, is to be understood, is the less to be regretted from the fact that the Supreme Court has laid down the law on this point (Wheaton, vol. 9, p. 209), that the framers of the Con-

stitution "must be understood to have employed words in their natural sense, and to have intended what they said, . . . that there is no other rule than to consider the language of the instrument, . . . in connection with the purpose for which it was used."

In the absence, therefore, of all authoritative construction by the courts, and of testimony as to the meaning and intention of the framers of the Constitution, we are left, under this rule of the court, to general reasoning upon the natural meaning of the words used, and the light which historic circumstances may throw upon them.

The Constitution, Art. 1, sec. 9, says: "*No bill of attainder or ex post facto law shall be passed.*"

Attainder, in itself, is considered the blemish or disgrace which follows the conviction of treason or other high crime. "Its *consequences*," says Blackstone, vol. 4, p. 381, "are corruption of blood and forfeiture."

The forfeiture or loss of civil rights may be resolved into three elements:

1. The right to hold any office or trust under the Government, together with the right to vote at any election for the choice of any officers.

2. The right to hold property, especially real estate; as that right in England and in this country, when the Constitution was adopted, was not allowed to any foreigner or alien.

3. The right to protection, in case one should leave the country, for the purpose of travelling or residing in foreign lands.

Thus the forfeiture of attainder was a loss of all civil rights—all the rights and privileges of citizenship.

The expression "corruption of blood," grew out of usages connected with the feudal tenures. The fief was an estate in lands held from a superior lord, on condition of fealty (fidelity), homage, and military service. It is highly probable that these fiefs or estates were at first granted as personal favors, and only for life. But in the troublous and confused times of the early settlements of the kingdoms of Europe, nothing was more natural than that the son of the vassal should succeed to the fief or estate of his father, if he was worthy of it, and capable of per-



forming its duties. In this way a usage grew up, by which the inheritance of the fief, with its titles and duties, came to have the force of law, and very generally prevailed, if it did not become quite universal. If, however, the vassal at any time failed of his duties, and came short of his fidelity—still more, if he should array himself against his lord—he, of course, forfeited all that he had received, not only his own estate and rights in the fief, but the rights of his heirs, whatever they might be, to succeed by inheritance to what he had lost. Under the Norman kings in England, says Hallam (“View of Europe,” chap. II., p. 11), these “absolute forfeitures came to prevail, and a new doctrine was introduced, ‘*the corruption of blood*,’ by which the heir was effectually excluded from claiming his title at any distance of time through an attainted ancestor.” This, of course, reduced them to the condition of serfs or slaves, with no rights which the more privileged classes were bound to respect. The idea was, that treason implied a baseness of “blood,” or of nature, which rendered the whole line of descent from the person attainted unworthy of personal confidence or public trust—too base, in fact, to be anything but slaves.\*

In England, attainder might befall a man in either of four ways :

1. By confession and abjuration of the realm.
2. By verdict of jury, founded on proof of guilt.
3. By outlawry, where the guilty person either fled or hid himself, so as to be out of the reach of legal process.
4. By bill of attainder. This was a bill passed in Parliament in the same manner as any other law. It named the person or persons to be attainted, declared them guilty, and pronounced sentence. It might, like any other bill, be passed by a bare majority, and for the most part the accused was attainted for an act which was no crime, and against which there was no law when the act was performed, or the words uttered, for which he was condemned.

Nor was this all. It was not an uncommon practice to pass

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\* Of course, this idea was modified as the feudal tenures passed away, and the rights of the natural-born subjects began to be recognized by the English laws.

bills of attainder against a man *after he was dead*. These bills of attainder were a most powerful engine of tyranny and injustice. They might be passed against any political opponent who might happen to be in a minority; or against any man, after he was dead, whose property the king or parliament might wish to secure. This most odious engine of despotism has been abolished in this country. Here, "*no bills of attainder may be passed.*" But attainder itself—that is, loss of political and civil rights—is not abolished in this country. It may be inflicted as a penalty for treason or rebellion, or other crime, only it must be by trial and conviction; it cannot be by bill or mere act of Congress.

The consequences of attainder, however, were not generally, if ever, expressly declared and pronounced to be the punishment. They were consequences which the sentence, pronounced by the court, or enacted in the bill, was said to "*work*," or draw after it. Just as with us—a man convicted of larceny, for example, and sentenced to the State Prison for a term of years. Nothing is said in the sentence of the court about loss of the society of his family—the control and management of his private affairs—the right to vote and be elected to office, etc.—and yet all these are involved in the sentence. The sentence, by its very execution, "*works*" these consequences.

Now let us look at the other clause of the Constitution in which attainder is spoken of. (Art. 3, sec. 3.) Here "*treason*" is defined, and it is declared that "no person shall be convicted of treason except by the testimony of two or more witnesses to the same overt act, or on confession in open court."

To be *punished* for treason, therefore, in this country, one must be convicted, either by proof or "confession in open court." It cannot be done by, 1st, Outlawry; or, 2d, By bill; as under the English law.

It must be remembered, however, that it is the *punishment* for treason that we are speaking of, and to which these restrictions of the Constitution apply, and not the mere *arrest* of one suspected of treason. There is no restriction imposed upon the power or right *to arrest and detain* any persons who are guilty of treason, or are suspected on sufficient grounds, any more than in the case of other offences.

The next clause of the Constitution goes on to say, "Congress

shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted."

It seems not unlikely that the framers of the Constitution, in accordance with the general policy of our Government, meant in this clause to declare that the punishment for treason, whatever that might be, should not involve or "work" evil consequences to the guilty any further than they might, 1st, be expressly declared in the words of the sentence passed upon him by the Court; or, 2d, *necessarily* involved in the execution of that sentence. These consequences, as we have seen, were of two classes—"forfeiture of rights," and "corruption of blood." One of which, viz., corruption of blood, is wholly abolished by our Constitution.

Under the English law the traitor was put to death with circumstances of unusual cruelty: his bowels were taken out, while he was alive, and burnt in his presence, with other elements of barbarous ferocity which need not be recalled here. And so far were these notions of corruption of blood carried, that the children must lose forever their right of inheritance through the guilty man, who was regarded as a broken or lost link in the chain that connected them with the past.

It will, doubtless, go far to account for this barbarity, to consider that treason was not regarded, under hereditary monarchs, as chiefly or mainly a crime against the people or the public welfare, but as a crime against the king. Not only resistance to the laws of the land, or the king's laws, but any word or act that might be regarded as in any way disrespectful to him, tending to bring him into disrespect or contempt, or disapproving of any of his acts or measures, might be made into "*constructive treason*," at least, and punished as such by bill of attainder, if not by conviction in open court.

But in this country we take a different view of the matter. Treason has been limited to "overt acts" of war against the legitimate authority of the United States. The punishment for treason has also been modified, and stripped of all unnecessary cruelty. We have abolished "corruption of blood" altogether, and adopted the humane doctrine that no man shall be made to suffer unnecessarily for the crimes of another. And in the

prosecution of this doctrine we have also placed some restrictions upon the other consequences of attainder—the forfeitures. With us, attainder shall “work no forfeiture, except during the life of the person attainted.” What is the import of this restriction?

I think that this language is used all along with reference to English law and usages, and was designed to abolish some things which were practised under that law. Does it then prohibit the absolute confiscation of the property of the convicted traitor, or an alienation of it, not during his lifetime only, but from him and his heirs forever? Many think so, but I do not.

1. In the first place, the expression, “*work . . . forfeiture*,” shows clearly that the framers of the Constitution were not, in this case, speaking of what might be *included in* the punishment as a part of it, but only of certain consequences which it might “*work*,” although not necessarily involved in it. In this view of it, the Constitution would not prohibit the confiscation of property from being a part of “the punishment,” which Congress has the “power to declare” against the traitor. The Constitution provides that *if* confiscation is to ensue, it must be as a part of the punishment included and expressly declared in the sentence of the court by which he was convicted; it could not be permitted to follow, as a consequence of that punishment or sentence.

But is the property thus alienated gone forever from his heirs and his family by virtue of the forfeiture? In England they have two grades of treason—high and petit treason. But in this country we have no petit treason; and the only thing that, under our Constitution, we can recognize as treason against the United States, is what they called high treason. Under the English law, in all cases of high treason, the alienation was absolute.

2. The word “forfeiture,” which is used in this connection, has a significant bearing upon the point before us. It is used in two senses: one concrete, and the other abstract. As a concrete term, “it denotes,” says Webster, “that which is forfeited,” and so Worcester, “the thing forfeited.” But as an abstract term, “it means,” says Webster, “the act of forfeiting; the losing of some right, privilege, . . . by an offence or crime. . . . In regard to property, the forfeiture is of *the right to possess*,

. . . but not generally the actual possession, which is to be transferred by some subsequent process." So Worcester, "*(in law)*, the act of forfeiting—a loss of property, right, or office, as a punishment for some illegal act or negligence." Hence the word denotes, in this connection, an instantaneous act, and not a continuous condition. In the other sense of the word "forfeiture," meaning thereby the thing that is forfeited—to "work forfeiture" would be ungrammatical; it should be "work *a* forfeiture," and in that case the language could be understood to mean only *to bestow labor upon it*, as one does upon his farm; a thing which "attainder" could not do.

If we pass from the "natural sense" of the word "forfeiture," to consider the nature of the operation, we shall find the argument equally clear and strong, as I think, in favor of the view which I am presenting. Considered in this light, forfeiture implies not the punishment of the crime, but some of the consequences of it. For example, take the case of smuggling—the goods smuggled are forfeited; but the smuggler is liable to punishment besides, and totally independent of the value of what he may have lost by his forfeiture. In some of the states, the man who sells liquors without due license, not only forfeits the liquors, to be sold again by public authority or to be destroyed; but he is also liable to punishment by fine or imprisonment, or both, besides the loss of his property (the liquor) by forfeiture. So, again, a forger may have many valuable tools, but the forfeiture of them is considered, in the eye of the law, as no part of the punishment of his crime.

We must carefully note that it was not the property merely of the person attainted that he lost, but his right to property. What he had went with his right to hold it, of course. Thus, Wooddesson (Lect., vol. 2, p. 259): "If a son be attainted of treason during the life of his father, donee in tail, and die, having issue, and then the father dies, the estate shall descend to the grandchildren *secundum formam doni*, notwithstanding the attainder; *but it is otherwise in case of a fee-simple*." They took the estate if it was entailed to them, not in consequence of his having any estate in it, but because it was given to them by an ancestor further back than the attainted person, and was theirs, according to the form of the gift. But if the estate was held in



fee-simple—that is, if it were absolutely his own, no other person at that time having any estate in it or right to it, as wife by dower, child by inheritance, the case was otherwise, says Wooddesson—that is, the forfeiture was absolute, and his heirs could not come into possession of it after his death. So also Blackstone (vol. 4, p. 385): “In the case of petit treason, the offender forfeited all his personalty absolutely, and his lands in fee-simple to the crown for a short time—a year and a day—and *after that*, ‘by way of escheat to the lord.’ But it was gone from the offender and his heirs forever. In case of high treason, however, the guilty party ‘forfeited to the king all his lands, etc., whether fee-simple or fee-tail, to be forever afterwards vested in the crown.’” P. 381.

I am well aware that the English laws concerning treason, attainder, etc., have been greatly modified since the adoption of our Constitution, and even before its adoption, as for example, 11 and 12 Wm. III.; 7 of Anne. By the statute 54 of Geo. III., passed some twenty-five years after the adoption of our Constitution, the English have taken very much the same grounds as we had done a quarter of a century before, in regard to the punishment of traitors. Still, however, in citing English law as explanatory of our Constitution, we must take the laws as they were at the time when our Constitution was framed, and not as they may have been made since that time.

We must remember that in England a large part of the land was held by some form of entail, so that in reality the traitor, for the most part, would have only a life estate in it; and this, therefore, was all that he could lose by forfeiture. The property entailed would go to the heirs—not, however, as *his* heirs or *through* him, but as it were *over* him and from some ancestor who had entailed it, and, in the language of Wooddesson, “*according to the form of the gift.*” His crime did not affect their rights in this case, since the property came to them independently of the fact that he had ever had an estate or interest in it.

Hence no argument can be drawn from the fact that in some cases lands in which the criminal had an estate during his life, did, after his death, come to his children. The lands came to them, if at all, because they were entailed, or were estates in gavel-kind—that is, they were either entailed to some particular

heirs or line of heirs, or to all heirs by what was called gavel-kind. But if the estates were held in fee-simple, the forfeiture was absolute. Under the English law, a man forfeited what he had, and nothing more—his life estate, if that was all he had, and the entire property if he held in fee-simple, or was absolute owner. But the estate or interest which the criminal had in the lands was never restored. It could not be restored, for it was either a life estate, or an estate in fee, and the man to whom it had belonged, being dead, it could not have been restored to him. He was beyond the possession and use of it. His interest in it and right to it alike had terminated by that act of Providence which removed him from among his fellow-men. Hence, the only forfeiture which, in the nature of things, can, by any possibility, extend beyond the life of the person attainted, is the forfeiture of rights implied in the corruption of blood. But in this country a man's rights are born with him, and they die with him. His children have the right to inherit what he leaves intestate. But if he leaves nothing which is legally his own, they have no right to what he had previously owned and lost, whether by gift, the misfortunes of business, the waste of prodigality, or the fines and forfeitures consequent upon his crimes. To that extent, his children must suffer for his acts.

I have one suggestion more to make in regard to the nature of a forfeiture. It is not a continuous act, so to call it. It is an act which, like a sale, is made once and at a definite moment; and though the article which changes owners by the sale remains sold, yet the sale itself cannot be said to remain. So a forfeiture: it takes place at a given time and the article remains forfeited forever, and forever alienated from him who owned it before, and the forfeiture cannot be said to remain, and *to keep taking place*. Hence a forfeiture, after the life of the person attainted had come to an end (and though it might be a forfeiture for his crime), could not be a forfeiture of anything that was his. It would not be his forfeiture at all. It could not be said to be a forfeiture of *his* property or rights; *that* must take place during his life, if at all. And hence the Constitution, in prohibiting forfeitures, except during the life of the person attainted, could not be prohibiting or limiting a forfeiture of the estate of the traitor, but only declares that the forfeiture must take place during his life,

and must not be visited upon the property of his children after it had become theirs. What gives emphasis to this view is the fact, that in England, at the time of the adoption of the Constitution, a man might be attainted *after his death*. In that case, of course, all the penalties and forfeitures would fall upon his children. His attainder would not only work a corruption of his blood, but it would be a forfeiture of their property, which would be, of course, therefore, a forfeiture after the life, or rather after the death of the person attainted. But in this country, and under our Constitution, the attainder works no corruption of blood ; it works no forfeiture after the death of the guilty person. The punishment must fall upon him and his property *while it is his* ; it cannot fall upon it after it has become theirs. Suppose we now insert the word “sale,” and see how the Constitution reads : “No attainder of treason shall work a *sale*, except during the life,” etc. Would anybody suppose for a moment, that the language was designed for anything more than to protect the property of the heirs ? Would anybody suppose, that the property sold before the death of the traitor was to be restored to his heirs after his death by virtue of these words of the Constitution ? Clearly not. The matter is too plain to admit of a doubt. Forfeiture is a conveyance ; it is one mode of changing title. It is so reckoned by Blackstone, and all the elementary writers, whose works are within my reach. But as a mode of conveyance, it must be an instant act. One cannot be always or permanently acquiring, or always losing, the same title. Like sale, escheat, etc., forfeiture must be instantaneous and completed at the time.

It may be objected to this view of the meaning of the clause of the Constitution under consideration, that it makes the phrases “corruption of blood” and “forfeiture, except during the life of the person attainted,” to mean precisely the same thing, and thus a tautology, which it is not to be presumed will exist in the language of that instrument. There would certainly be great force in the objection if it were well founded.

But the phrases are not synonymous. There may be corruption of blood without forfeiture beyond the life of the person attainted, and forfeiture without corruption of blood. In the former case, the children would have the right to acquire and hold property, to vote, etc., but they could not inherit property from a

grandfather through their father who had been attainted. In the latter case, the children might be involved in the attainder so far as the loss of their father's property is concerned, while collateral heirs, as children and descendants of a brother of the attainted traitor, might inherit property from their common ancestors—say their grandfather—even when in order to do so it would be necessary to trace the title through the attainted person. The attainder in this case would affect his children, but not his collateral heirs.

There is one other consideration that seems to confirm this view of the Constitution. It will not be supposed for a moment that the framers of the Constitution intended to extend to rebels and traitors any immunity beyond what might be extended to other criminals. The idea is absurd. But in other cases we punish by forfeitures and fines as well as imprisonment, etc. The court may sentence a man to a fine for a definite amount. This fine may take all his property, personal as well as real, and yet nobody ever supposed, that *that* was not an alienation forever, or that the property must be restored to the heirs of the guilty man after his death. The transfer is absolute, and the title acquired in this way is as good for the holder of such property as any that is known to our laws.

Hence there are cases constantly occurring in which punishment for crimes does work alienation of property, extending beyond the life of the person convicted and disgraced by the crime. Why should an exception be made in favor of traitors and rebels? Is their crime less heinous than forgery or horse-stealing? Did the fathers of our country intend to deal tenderly with them; to make of treason a light thing; to hold out inducements and temptations to it, by shielding those who might endanger the nation's welfare and imbue their hands in the blood of their fellow-citizens from the penalties that might fall upon other and lighter offences? The question needs no answer. And yet this is the result of maintaining that the Constitution prohibits the confiscation of the property of rebels for a period extending beyond their natural lives.

Consider, now, the absurdity of taking the real estate of rebels in part punishment of treason, if we have no right to alienate it beyond the period of their natural lives.

The penalty for treason being generally the death of the traitor, the execution of the sentence of the law upon his body would be likely to follow very soon after the sentence itself was passed upon him. If, now, we can forfeit his real estate only for his lifetime, forfeiture really amounts to nothing—for it could extend only from the time of the sentence to the execution. It would be no punishment at all—no damage to his heirs, and no benefit to the community which he had so deeply wronged. We certainly cannot suppose that the framers of our Constitution, among whom were some of the best scholars and the most learned lawyers of the age, could have intended any such senseless absurdity as this. Nor is this all; the clause of the Constitution in question makes no distinction between personal and real estate. The words are, “*or forfeiture except,*” etc., and therefore the restriction, whatever it be, applies as well and with the same binding force to personal effects, mere chattels, and household goods, many of which perish in the using, as to real estate.

I pass to another very important consideration. I have several times alluded to the general policy of our Government to make every one responsible for his own acts, and not to visit the sins of the father upon the children. And it is worth while to consider how this interpretation of the Constitution harmonizes with that idea, and secures its complete realization in regard to the subject of treason at least. In England a man’s treason might be visited on his children in either of two ways, as we have seen, namely:

1. By corruption of blood, in consequence of which they could inherit nothing from him, or even through him from their ancestors.

2. By bills of attainder *passed after the death of the offender*, and when his property had passed into the hands of his heirs, who might be perfectly innocent of his crime.

I have already spoken of the English law as allowing attainder after the offender himself was dead. Now, nothing seems more natural than to suppose the framers of our Constitution had these *post mortem* visitations upon the posterity of the offender in mind, when they added the words in our Constitution, “*or forfeiture, except during the life of the person attainted.*” Fortunately, such a thing as attainder after the death of the



offender is entirely unknown in practice in our country. And it does not appear to have occurred, very generally at least, to the minds of our people, that that English practice could have had anything to do with the insertion of this limitation to forfeiture in our Constitution. But at the time of the Revolution, such cases were of comparatively recent occurrence. "*Many such attainders,*" says Woodesson (Lec., vol. 2, p. 623), "have been made." And a recurrence to English history shows that it had been a very frequent resort of the crown, not only for the sake of punishing offenders, but as a means of supplying the royal exchequer, and of providing for the reward and ennoblement of a favorite. In fact, it was part and parcel of the policy of which bills of attainder were another part, for making the power of the monarchy complete, and so breaking down the rights of the people as to make them completely and helplessly submissive to those in authority.

Of the nature and necessity of this as a principle of feudal tenure and monarchical institutions it is not necessary to speak at length. There the landed property was for the most part held in large estates by feudal tenures, and is a part of the policy of the kingdom. If a baron should turn traitor and die on the battle-field in the act of committing his treason, or if he should flee the country and die abroad, there would be no way for the king to recover what was essential to the integrity of the realm, except some process by which he could be attainted after his death. The estate must be recovered to the support of the crown, and for that purpose it must be taken from the heirs of the traitor; and this was often done, in order that it might be bestowed upon some favorite—or at least some loyal person, as a reward for services rendered, or as a pledge for the future.

But in this country we have no such element of national policy—no such reason for disturbing the rights of the dead or the rights and possessions of the living. If a rebel is to be attainted, it must be while he lives; if his property is to be forfeited for his treason, it must be while it is his, and not after it has passed, by his death, into the hands of his heirs, or belongs of right to other persons.

Now, by the interpretation which I suggest for these words of the Constitution—"forfeiture, except during the life of the per-

son attainted,”—we secure this beneficent object of the framers of our institutions, and *not without*. For, on my interpretation, the forfeiture being regarded as a mere act or mode of changing the title to property, effects the change and has no longer an existence. And as the Constitution requires that the act should take place while the offender lives, it forbids its taking place after he is dead. Otherwise, what was manifestly the object of the framers of the Constitution and the obvious policy of our Government, would not be secured. Their intention would be only partly expressed and not effectually accomplished. But, on my view, the work is complete, the theory is fully carried out, fully and perfectly expressed in all its parts and proportions.

I think that we have thus fulfilled the two conditions of the rule laid down by the Supreme Court and already cited.

1. The word “forfeiture,” in its most “natural sense,” denotes an *act* of alienation or change of title to property, and in itself no more implies a return or restoration of the property to the party from whom it was lost by the forfeiture, than a sale, or any other mode of changing the title whatever.

2. “The purpose for which the word was used” was manifestly to protect the children and heirs of the guilty man from any visitation of his sins upon them; from being held in any way responsible for crimes of which they were innocent, in which they had no participation, and against the commission of which they had no means or power of influence.

The loss of his property, it is true, might be a damage to them. And so would the loss of his life by the public execution to which he was to be condemned. And in the same way, his want of capacity to take care of his property, his vices and prodigality, against which no law could protect him, might impoverish them. And this is only a part of the inevitable consequences of vice and crime—a part, if one chooses so to regard it, of the penalty with which not only states, in their sovereign capacity, as administrators of their own laws and sense of justice, but society also, and, we may add, God, in his providential government of the world, visits the offenders against the laws of righteousness and justice. And the prospect of such consequences, as well as the known certainty that they must and will inevitably follow, are among the most powerful motives that can act upon

the human heart to deter men from the commission of crime. And in this view, whatever of severity there may seem to be in such a policy, it is a severity which man cannot abolish if he would, and a severity which he should not abolish if he could—for it is but mercy under the sterner form of severity—*this* is mercy. But the other course—the visiting of the sins of the father upon the children, after he has gone to his final account, and cannot appear to answer for and defend himself before his earthly tribunal, is only unmitigated and most unnecessary cruelty.

And there is something peculiarly appropriate in the punishment of treason by confiscation of property. It has been practised, I believe, under every form of municipal law and by every government that has existed. For lighter offences we punish by fine and imprisonment. We take the life of him who has merely taken the life of a fellow-man, with malicious intent. But for the man who has aimed at the life of the nation, not death only, but utter loss of all civil rights and privileges, would seem to be the natural and appropriate manifestation of the nation's sense of the enormity of the wrong that had been attempted against it. Let the people feel how priceless are their blessings under a benign government and a righteous administration of laws. Let them see, in the utter destitution and wretchedness to which they are reduced who wantonly raise the murderous hand of treason against it, how sacred was that life, the life of the nation, which they had imperiled—how worse than the midnight assassin and the highway robber is he who commits treason against that government and those laws which have been for him and for the millions of his fellow-men the source of all their earthly enjoyments.

It may not add much to the force of my argument to remark, that the rebels, with these same words in their Montgomery constitution, are applying it in the sense for which I am arguing. They are confiscating the property of loyal men who may happen to own real estate within their power, and, as I understand, with no reservation or remainder to the heirs. As I said, the argument from that source may not be worth much in the estimation of loyal men; but as this interpretation is to act chiefly against them, they ought not to complain of the measure they

give. It is certainly no more than fair that they should be estopped by their own acts and compelled to abide by the construction which they have put upon the law. It may, indeed, be hard upon their children so to confiscate their property, but the payment of the expenses of this war is a hardship that must fall upon somebody; it must take somebody's property, and if it does not take that of the rebels by confiscation, it must take *ours* and that of *our* children by taxation.

In a review of the whole matter, therefore, it seems to me that the four following propositions are clearly proved, and express the provisions of our Constitution on the subject of attainder and confiscation :

1. We have abolished bills of attainder altogether, so that there can be in this country no attainder for treason, except "on conviction by due process of law."

2. We have stripped the execution of the law upon the traitor of all unnecessary barbarities, such as the revolting scenes that attended the execution of such persons under the English law.

3. We have abolished "corruption of blood."

4. And fourthly, we have provided that no man's children shall be punished for his guilt by forfeiture of their possessions *after his death*.

I have taken no notice thus far of the debates in Congress on the passage of the Confiscation bill, July 17th, 1862. I read them at the time and have refreshed my recollection of them since. The point which I have been discussing was not the one that was prominently before the minds of those who took part in the discussion. They were considering confiscation as a war measure. Still, however, the point was brought up in the colloquy between Senators Collamer, Doolittle, and Hale, on the 23d of April, 1862. Mr. Hale took the view which I have been endeavoring to maintain in this letter. Senator Collamer asks, "Would it not be strange if, in framing the Constitution, those who made it should have taken such pains to take care of fee-tail estates, of which there were but few here, and let the great body of estates in fee-simple be forfeited?" The simple answer is, that they did not. They were not taking care of *estates* at all, but of the *rights* of men, and they abolished the old doctrine of

corruption of blood and forfeiture after the death of the traitor, in order to protect the rights of innocent heirs. That is just the difference between our policy and the English. They legislate to protect estates; we to protect men. Still, however, the general opinion seemed to be against the views entertained by Mr. Hale.

I am inclined to think, that the act of 1790 has done more than the words of the Constitution themselves to produce the general impression with regard to confiscation. Something of the same kind of views have been entertained in regard to the naturalization of foreigners. Thus Duer (Const. Jurisprudence, p. 298), and other authors on the Constitution speaks of its "not authorizing any but WHITE persons to become citizens" (the capitals are Duer's), when not the Constitution, but the act of 1794, limits naturalization to whites of foreign birth. The Constitution says nothing about the color of citizens, whether natural-born or naturalized.

But be the origin and cause of this prevalent opinion what it may, the opinion prevailed in the Senate, and it was to meet and accommodate the feeling that grew out of it that the joint resolution of the two houses of Congress was passed, limiting the effect of the forfeiture of real estate. The phraseology of that resolution is worthy of notice. It says, "Nor shall any punishment or proceeding under said act be so construed as to work forfeiture of *the real estate of the offender beyond his natural life.*"

But why make the discrimination between real and personal estate? It is true that it is easy to identify and restore the one, and difficult, if not impossible, to restore the other. *But the Constitution makes no such distinction.* Nor did the English law, so far as I have been able to discover. Comyn says (Digest, vol. 4, p. 222), "If the owner is attainted for high treason, he forfeits all his lands and tenements, goods and chattels." Even when there was no corruption of blood, the land held in fee-simple was forfeited to the king for a year and a day, and after that it escheated to the lord, and the alienation from the offender and his heirs was as absolute as if there had been only simple confiscation. If, therefore, constitutional scruples were the ground of this resolution, it is difficult to see why it should have taken this



form. If the Constitution intended to prohibit forfeitures which should alienate property beyond the lifetime of the offender, this resolution does not go far enough. It should protect personal property as well as real.

Another remark occurs in comparing the words of the resolution with those of the Constitution. The words of the Constitution are, "forfeiture *except during the life.*" The words of the resolution are, "*beyond his natural life.*" Here is a manifest discrepancy. If Congress meant the same as the framers of the Constitution, why depart from their words? I don't think they could find better ones. But the words of the Constitution, as I have argued, intended, simply, that forfeiture is an act which, by the Constitution, cannot take place except during the life of the offender, how long soever its consequences may last—while the words of the resolution imply by "forfeiture," not the act, but the consequences of the act; since these could, but that could not, by its very nature, last *beyond* the moment when it became complete. This discrepancy is certainly significant, and shows, it seems to me, most clearly and conclusively, that either Congress did not pass this resolution out of regard to the restriction of the third clause of the third article of the Constitution, or else that they had in their minds, as the meaning of the clause, an idea which the framers of the Constitution never intended to express by the words which they used.

And this brings me again to the opinions already expressed, namely, that the prevalent views on the subject are based on the act of 1790, rather than upon the Constitution itself. In passing that act, just as in providing for the naturalization of foreigners, Congress clearly did not aim to interpret the Constitution and to go to the utmost extent which it would allow. They aimed rather to keep clearly within its prescribed limits, leaving a reserve of power for more pressing necessities and greater emergencies.

I am well aware of the grand principle declared by the Supreme Court (1 Cranch, 299), that any usage under the Constitution which arose at the time, and has been continued ever since, *as an interpretation* of the Constitution, will fix upon it a meaning that ought not ever to be departed from. But the statutes just referred to cannot be regarded in the light of an

exposition or interpretation of the Constitution, although they were passed, in part at least, by men who had participated in the formation of that instrument. They are an expression of their sense of its meaning, so far as those acts imply a belief on their part that they had a right to pass such acts—that is, acts limiting the punishment of treason to the death of the offender without forfeiture of his property, and naturalization to white persons of European descent. But those acts, neither by their phraseology nor by the act of passing them, imply any doubt on the part of the men who composed those Congresses, that they had a right to go further and alienate property, real as well as personal, by forfeiture to the Government and its use forever.

I have discussed this question simply as a matter of interpretation of the meaning of the Constitution. I have said nothing, and I do not intend to say anything, of the expediency of applying what I conceive to be clearly within the power of Congress to those who are now in open resistance against the General Government. I should certainly be disposed to deal as tenderly as any one with the masses of the people who have been drawn into this most unnecessary rebellion. But of this I did not design to speak. Let us suppress this rebellion, as I have no doubt we shall, and we may congratulate ourselves and the world upon the ultimate and final triumph of the principles of political freedom and self-government—a government which is “of God and not of men,” and under which, in the language of the Declaration of Independence, “all men are,” in fact as well as in theory, “created equal, and endowed by their Creator with the inalienable rights of life, liberty, and the pursuit of happiness.”

And in conclusion, my dear Judge, permit me to say, that I should hardly have undertaken the discussion of subjects which properly belong to your profession, but for the consideration that we live in troublous times, when our country is in need of the services of all her loyal sons—in times when we should not be too fastidious about mere forms of decorum and professional courtesy—when he who can say a word or do a deed for his country’s cause should not withhold his hand. I have not so learned Christianity as to understand how one can be faithful to his God who is not loyal to his country, and who, after his duty to his

God, will not, in every hour of her peril and of her need, rush to her service.

I have the honor to be, my dear Judge, your friend and fellow-servant, in the service of God and our country,

W. D. WILSON.

GENEVA, N. Y., *March 24, 1863.*

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GENEVA, *March 29, 1863.*

Rev. W. D. WILSON, D.D.

DEAR SIR:—I have read your discussion of the punishment of treason, in the form of a letter addressed to me, with great interest and satisfaction. You are entirely correct in saying that your views accord with mine on that subject, and it gives me pleasure to learn that my suggestions have been of service to you in your investigation of it.

Our fathers, in framing our Constitution, have provided for us a humane, yet efficient mode of punishing treason. In this, as in everything else, they have done well. To enable us to understand the mode they have marked out for punishing this highest of crimes, we must bring to view and keep before us the modes in which it was punished in England when our Constitution was adopted.

At that time treason was punished in England in two ways: one by trial and conviction of the traitor in a court of law, the other by an act of parliament denouncing his guilt and punishment.

These acts of parliament, called “bills of attainder,” were passed against traitors, both living and dead, and denounced punishments, more or less severe, according to the estimate which the parliament who passed the act formed of the crime of the person against whom it was passed.

When a traitor was tried in court, found guilty by a jury, and judgment pronounced against him, forfeiture to the crown of his property, real and personal, and corruption of his blood followed, among other disabilities, as legal sequences of the judgment against him. When a traitor was condemned and punished by an act of parliament, the punishment was such as the parliament

saw fit to denounce. In case the traitor, thus condemned and punished, was living when the act was passed, the judgment denounced against him was generally, and almost always, death, forfeiture of his property real and personal, and corruption of his blood; and in case the traitor, thus condemned and punished, was dead when the act was passed, the judgment denounced against him was forfeiture of his property real and personal, which he owned when in life, and corruption of his blood.

In these modes of punishing treason, which prevailed in England when our Constitution was adopted, three things were most unjust and cruel. They were,

*First.* Condemning and punishing a man by a legislative act, which not only adjudged him guilty without giving him an opportunity for defence, but declared his acts criminal after they had been committed.

*Second.* The blood of the traitor was corrupted, which inflicted an injury only on his innocent heirs.

*Third.* Passing an act of attainder against a man after he was dead, and forfeiting his property to the crown after it had passed by descent to his heirs, and thus punishing his innocent heirs and them only.

Our fathers determined that none of these three iniquities should be practised under the government they formed for us. They put an end to the first one by the clause in the Constitution which declares that "No bill of attainder or *ex post facto* law shall be passed;" and to the second and third ones by the clause which declares that "No attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted."

The Constitution confers on Congress "power to declare the punishment of treason." This enables Congress, by prospective legislation, to occupy the whole range of punishment against traitors, and denounce upon them the loss of life, liberty, property, and all civil rights. The only restriction on the exercise of this power confines it to the guilty traitor himself, and does not allow it to reach his innocent heirs by corrupting his blood, or forfeiting his property after he is dead.

It appears by a message from the President to Congress after the confiscation act was submitted to him for approval, that in

his opinion the clause in the Constitution, viz., "or forfeiture, except during the life of the person attainted," limited the power of Congress in declaring the punishment of treason to a forfeiture of a traitor's life interest in his real estate; or in other words, that a forfeiture of his real estate should not operate upon, or affect such estate beyond the period of his life. Although the President in his message remarks, "that the provision in the Constitution, put in language borrowed from Great Britain, applies only in this country, as I understand, to real or landed estate," yet, with the most profound respect for so high an authority, and with great diffidence in my own professional knowledge and research, I must say, that I neither know, nor can find, anything written or spoken in this country or in England showing, or tending to show, that this clause of the Constitution relates only to real property, and does not apply to personal. There is no intimation of any such distinction in the Constitution; nor does there appear to be any reason why the personal property of a traitor should be forfeited absolutely, and his real property only qualifiedly. I speak on this subject freely, as I am sure there are no gentlemen in this country who would be more ready to admit, and if in their power correct, an error, than our true and faithful President and his learned and able legal adviser.

The error which has arisen respecting this clause of the Constitution proceeds probably from two sources—one, in not giving due consideration to the cruel and unjust mode of punishing treason, which it was intended to prohibit—the other, in omitting to ascertain and duly regard the true meaning and legal effect of the term "*forfeiture*." Scarcely any word occurs more frequently in the system of jurisprudence which prevails in this country and England. Long before our Constitution was adopted, it had acquired, and still has, a clear, definite, and well-established meaning. It simply and solely means a mode of changing title to property. It expresses an act by which title to property passes from one to another. It has all the characteristics of a bill of sale of personal property, and a conveyance of real estate; and with one exception is identical with them. When title to property is changed by bill of sale or conveyance, the owner parts with it voluntarily for a consideration received. When it is



changed by forfeiture, the title is taken from the owner against his will, to punish him for his crime. But in each case the act of changing title is in itself single, complete, and finally ended as soon as performed. If we should substitute in the clause of the Constitution in question, the meaning and legal effect of the word "*forfeiture*," in the place of the word itself, the clause would then read as follows: "Or take from a traitor his title to his property, except during his life." On such a reading it is quite clear, that no more appropriate terms could be used to prohibit taking his property from his heirs after his death. Giving, therefore, to the word "*forfeiture*" its true meaning and legal effect, there would seem to be no doubt about the construction of this clause of the Constitution, and about the purpose for which our fathers introduced it into that sacred instrument.

It is deeply to be regretted that the resolution explanatory of the confiscation act was ever passed, and if it was necessary to pass it, that it was not passed in the very words of the Constitution. As passed, it reads thus: "Nor shall any punishment or proceedings under said act be so construed as to work a forfeiture of the real estate of the offender beyond his natural life."

The passage of this resolution was, beyond all question or doubt, intended to prevent the confiscation act from being exposed to the charge of violating the clause of the Constitution in question, by subjecting the provisions of it to the constitutional restriction, although the language of the resolution may express a limitation upon the act, which the clause of the Constitution does not require.

If the act violates the Constitution, it does so as fully and effectually with as without the explanatory resolution; for the act forfeits absolutely the personal property of the rebels, and unless it can be shown that this kind of property is excluded from the operation of this clause of the Constitution, while real estate is not, the confiscation act clearly violates it. But as the intention of Congress in passing the joint resolution is manifest, viz., to conform the act to the Constitution; our courts will probably apply to the subject the well-settled rule of the construction of statutes, which requires courts to carry into effect the intention of the Legislature, and hold that the joint resolution means the

same thing as the clause in the Constitution; and thus our confiscation act will accomplish the great and salutary objects which Congress designed to effect by its enactment.

The variety of views, the protracted discussions, and the late day of the session on which the joint resolution was passed, probably prevented the new phase of the subject presented by the President from receiving that full and thorough investigation which it would have received under other circumstances.

The acts of our thirty-seventh Congress will fill a volume in our national history, unsurpassed by those of any Congress since the adoption of the Constitution, not even excepting the first one. The faithful, wise, and patriotic labors of the majority will give every member of it an enduring place in the hearts of his countrymen, and his name will be remembered and honored as long as our national flag waves.

“O’er the land of the free and the home of the brave.”

The wonder is not, that a single resolution may have passed near the close of a long and laborious session, without a close scrutiny of its language, and a full and thorough investigation of its bearings; but the wonder is that a Congress, sitting and deliberating as the thirty-seventh Congress did, amid a terrific civil war, could have fully met every want of the nation, and adopted every measure which the honor, interests, and safety of the country required.

Respectfully, your obedient servant,

SAMUEL A. FOOT.

## ADDENDA.

The following facts and points are submitted as worthy of consideration in further illustration and confirmation of the foregoing argument:

I. Bills of attainder were in use, and attainder after the death of the traitor was also provided for by statute, in this country, before the adoption of the Constitution.

1. The Constitution of some of the states, as New York, 1777, for example, allowed of bills of attainder in certain cases; and confiscations of property owned by tories had been made in

several of the states, as New York, Pennsylvania, Virginia, and New Jersey.

2. A bill of attainder was passed in New York, Oct. 22, 1779, which also provided for the attainder of persons *after their death*, as well as when in life, and the forfeiture of all the property which they owned at the time of their death. (See also Johnson's Cases, vol. 2, 267; Jackson *vs.* Sands.)

3. Although some or all these state constitutions and laws abolished corruption of blood, they placed no restrictions upon forfeiture.

II. Forfeitures under these laws worked perpetual alienation of property or title.

1. This was expressly declared in New York. (See Johnson's Cases, vol. 2, 236; Sleight *vs.* Kane.)

2. The subject of confiscation and forfeiture for treason was often before the Continental Congress, with reference to the restoration of the lands of the tories which had been confiscated. Several of the states remonstrated against restoration. Madison, Hamilton, and others, believed the people would never consent to such a measure, though England might demand it as a condition of peace. (See Debates, 1783, Jan. 16th, March 12th, 13th, 14th, 15th, 20th, May 9th, 20th.)

These facts show that the doctrine of limited or restricted forfeiture for treason was not then prevalent or generally accepted by the people and statesmen of our country.

III. There has been no tendency in the English legislation to restrict forfeiture for treason to a mere alienation for the lifetime of the traitor.

1. In 1814, Sir Samuel Romilly succeeded by statute (54 Geo. III., c. 145), in abolishing corruption of blood in all cases, except treason. (See Dodsley's English Annual Register, 1814, p. 110.) And by statute (3 and 4 Will. IV., c. 106, § 10), corruption of blood in cases of treason also was abolished.

But there has been no effort in England, so far as is known, to limit the alienation by forfeiture for treason. The statute of 7 Anne, c. 21, passed in reference to the adherents of the Pretender, which, however, was never carried into effect, and was repealed by 39 Geo. III., c. 93, only aimed to abolish corruption of blood.

A very able discussion of that clause in the Federal Constitution which relates to the forfeiture of property belonging to persons attainted of treason, has been published at Albany in two letters, one from Professor Wilson, of Geneva College, and the other from Judge Foot. Professor Wilson inquires, both what was the particular intent of this provision at the time it was adopted, and what would be a reasonable interpretation of its language if adopted even now. Considering it in both respects, he comes to the conclusion that the intention of those who framed the Constitution was to prohibit the legislative power from punishing treason in the absurd way known in England, after the death of the offender, by depriving his heirs of the property which had descended to them. The letter of Judge Foot is a briefer statement of the argument, and confirms the conclusions of Professor Wilson.

The clause of the Constitution directing that "no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted," does not, by any sort of necessity, imply that the person attainted of treason shall only forfeit a life-estate in his property. If it did, then it is very clear, as Professor Wilson shows, that it would relate full as much to personal as to real estate. If a traitor owned a thousand dollars in bank stock, or in goods of any sort, the Government could only confiscate the use of them for the period which should yet elapse before his death. On his death, his bank stock, his carriages and horses, his household furniture, silver forks included, and his bonds and promissory notes, would revert to his heirs. This is so preposterous an interpretation of the Constitution that nobody pretends to set it up, and yet we must adopt it if we insist that "forfeiture during the life of the person attainted" means the forfeiture of a life-estate in the traitor's property.

We must, therefore, look for some other construction of the clause. The history of English law supplies one. It was often the practice, when our Constitution was framed, to punish treason in England by attainting the blood of the traitor in such a manner as, even after his death, to deprive his heirs of the property transmitted to them. The framers of our Constitution resolved that this should never be done by our laws. They therefore directed, in substance, that the punishment of forfeiture or confiscation should only be inflicted during the lifetime of the person attainted. After he had died, and the property he possessed had passed to his heirs, they were not to be deprived of it. Nor were they to lose the right of inheriting through him property which had never come into his possession. If his property was to be confiscated for treason it was to be confiscated during his lifetime.

Other considerations are dwelt upon, showing the improbability that the framers of the Constitution intended to favor the offence of treason by prescribing so ineffectual a punishment for the conspirator against the liberties of his country as is implied in sparing and protecting his property for the use of his family. The authors of the pamphlet have put the question in such a

light that it seems to us there can be no room for doubt as to the real meaning of the framers of our Constitution. The pamphlet is entitled "Attainder of Treason, or the Confiscation of the Property of Rebels." A few copies are to be had at this office.—*The Evening Post*, Monday Evening, May 11, 1863.

The attention of Congress, we hope, will be directed by some of its members, at an early period in the session, to the necessity of amending such of its recent legislation as restricts the confiscation of real estate in cases of treason, to a term commensurate with the life of the criminal. We do not much wonder that the language of the Constitution in regard to forfeitures for treason should at first have caused many persons, and among them Mr. Lincoln, to hesitate. A fuller examination of the question, however, has in the minds of most men removed all doubt on the subject. In speaking of "attainder for treason working corruption of blood or forfeiture," the Constitution employs language which in this country has become fairly obsolete, and such as requires a recourse to history in order to make its meaning clear.

This was done very ably some eight months since, in a pamphlet written by Professor Wilson and Judge Foot, of Geneva, in this state. They showed that it was formerly the practice in England for parliament to pronounce persons guilty of treason after their death, and to declare their blood so tainted and corrupted by this crime that they could not transmit an inheritance to their descendants. By means of this pretext their heirs were deprived of the property which would otherwise be theirs by the law of inheritance. This was the abuse—and a grave abuse it really was—which the Constitution intended to prohibit; and in referring to it, the peculiar technical language of bills of attainder was employed. If the framers of the Constitution had meant simply to protect real estate from confiscation for the crime of treason, except for a term of years corresponding with the lifetime of the delinquent, they would assuredly have said so in so many words. They would have said, "No landed or real estate shall be forfeited for the crime of treason for a longer time than the life of the delinquent," or some such plain and clear statement of the matter. On the contrary, having in view only the absurdity and hardship of passing acts of attainder after the death of the individual, in order to gain a pretence for seizing upon the property of his heirs, they adopted a provision declaring that "no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted."

This view of the question has been taken in a recent case by Judge Underwood, of the United States District Court for the Eastern District of Virginia, a pretty full abstract of whose opinion we published the other day. After the light which these discussions have shed upon the subject, we see no occasion for Congress to hesitate in visiting the crime of treason with a punishment somewhat proportioned to its enormity. It will strike all men of the ordinary compass of understanding as very strange if the Government,



after sustaining such enormous losses in her citizens slain, and in her resources poured out without stint to defend the Union, should find that it has no power to make the rebels contribute in some small degree from their princely possessions to the vast expenses it has sustained, but must content itself with the usufruct of their extensive plantations on condition of restoring them undamaged to their heirs. To suppose that the framers of our Constitution intended to place the Government in this position of impotency is to impeach their common sense.

Again, it has been well argued that if the Constitution, in case of treason, prohibits the forfeiture of more than a life-estate in lands, the prohibition extends equally to personal estate—to money, to stocks, to movables of every sort. If ten thousand dollars of bank stock be confiscated, the Government must content itself with taking the dividends during the life of the present Slidell and the Benjamin for the time being, and after they are worn out and sleep with their fathers, must hand over the certificates to the younger Slidells and the juvenile Benjamins. If it gets hold of a few thousand dollars in gold from the hoard of some wealthy rebel, and causes it to pass through the formalities of confiscation, it can take the interest of the money merely while the rebel lives, and is bound to deliver the principal to his heirs as soon as he dies. The language of the Constitution includes as well personal as real estate, treasury notes as clearly and distinctly as houses, carriages and horses, herds and flocks, as well as lands. These can all be forfeited only for the lifetime of the traitor, or else the construction we are considering is manifestly a false one.

This single consideration reduces the interpretation which favors only a temporary forfeiture to an absolute absurdity. Congress should vindicate its claim to the possession of ordinary sanity by repealing instantly all the previous legislation which favors that theory. Plausible as it might have seemed to a hasty examination, it has become an exploded fallacy, and should be swept aside into that repository of political rubbish which contains the doctrines of nullification and the right of secession.—*The Evening Post*, Saturday Evening, December 12, 1863.

The constitutional restrictions upon attainder and forfeiture for treason against the United States, and especially their effect with reference to the recent confiscation act, are learnedly discussed in a joint pamphlet by Professor W. D. Wilson, of Hobart College, and the Hon. Samuel A. Foot, of Geneva. These gentlemen agree in the opinion, that the clause of the Constitution which has been supposed to limit the power of Congress to confiscation of the life-interest of traitors in their property, is susceptible of a different interpretation. The argument presented is in substance as follows:

The punishment of treason in England at the time of the adoption of our Constitution was by trial and conviction of the traitor in a court of law, or by an act of parliament called a bill of attainder, which might be passed against a traitor living or dead. If living, he was generally adjudged to death, forfeiture of property and corruption of blood being part of the sen-

tence. If dead, he was still condemned to suffer in property and blood as before. This punishment was manifestly unjust in that it was a legislative act, and because the penalty was in fact imposed, not on the criminal, but on his innocent heirs. The Constitution of the United States undertook to remedy the injustice, by declaring first, that "no bill of attainder or *ex post facto* law shall be passed," and secondly, that "no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted." It confers on Congress the power to declare the punishment of treason, subject to these restrictions. The question therefore under the confiscation act must depend on the interpretation of the second clause above quoted.

Judge Foot is of opinion that the prevalent error concerning it has arisen from a failure to appreciate its intent to prohibit the cruel and unjust punishment of treason which the English law then inflicted, and from the omission to regard the true meaning and legal effect of the term forfeiture. That word has a well-ascertained legal sense, acquired long before the adoption of the Constitution, and still retained. It means a mode of changing title to property and is identical in effect with a common conveyance of property, differing from it only in the circumstance that an ordinary instrument of alienation is based on a consideration, real or implied, while in the case of a forfeiture the title is taken from the owner by way of penalty for a crime. Substituting this legal meaning of the term forfeiture for the term itself, it is manifest that the claim will then mean that no attainer shall destroy the title to a traitor's property, except during his life.

Perhaps the whole argument may be more briefly stated by considering the question as one of the arrangement and logical dependence of the different members of the sentence. Judge Foot's construction would be entirely natural, and perhaps inevitable, if the clause had been, "No attainder of treason shall, except during the life of the person attainted, work corruption of blood or forfeiture." That is, you shall not, after the death of a traitor, punish the innocent heirs to whom his property has descended for the crime of their ancestor. If during his lifetime the fee of his estate is confiscated, no injustice is done to his heirs, for he has no heirs. *Nemo est hæres viventis*. And the obvious purpose of the framers of the Constitution was to reform the practice of imposing the penalty after the death of the traitor—a purpose which, by this construction, is completely fulfilled.—*New York Daily Tribune*, Friday, May 22, 1863.

There has long been great doubt in the minds of intelligent and conscientious citizens whether any confiscation act should be passed to take hold of the property of convicted rebels, or whether any act, if passed, could, under the terms of the Constitution, be effectually enforced. This doubt has arisen out of what seemed a practical difficulty in the matter, owing to the form of constitutional limit, "No attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted." How was it possible to confiscate a rebel's corn, flour, money, bank stock, ships, houses

or lands, only "during his life?" Who would be entitled to this property after his death? and how would it be restored?

Judge Samuel A. Foot, of this state, has done the country and the cause of constitutional interpretation a timely service in a review of this question, which he has just published in the form of a letter to Professor Wilson of Hobart College.

By tracing the history of the penalties of treason down through English law, from which the clause in our Constitution is transplanted, Judge Foot endeavors to show that the meaning of the clause we have quoted is, that all penalties for treason must be inflicted during the lifetime of the traitor, or not at all. It was at one time the practice in England to corrupt the blood of a traitor, so that disability to take property would descend to his heirs. It was the purpose of the American fundamental law to prevent the application of this principle in this country. Such and no other, in Judge Foot's view, was the intention, and should be the effect, of the clause in our Constitution.

The letter is very able and interesting, and will reward general attention. — *The New York Times*, Tuesday, June 16, 1863.

On Thursday last, the 23d instant, the first case under the confiscation act came up before Judge Wylie, of the Supreme Court, in the District of Columbia. The Judge sustained the law, and remarked that "*there is no distinction between personal property and real estate, nor does the Constitution, as has been supposed, forbid the absolute forfeiture of real estate.*"

When the pamphlet referred to was first written, we do not suppose that there was one lawyer in a hundred in the United States, perhaps not one in a thousand, who held the view now adopted by the court, and which it was the object of the writers of that pamphlet to sustain. We happen to know that hundreds of copies of the pamphlet had been circulated in Washington, and that they had been eagerly sought and carefully studied by nearly, if not quite, every prominent official at the seat of the General Government.

The opinion here referred to as erroneous, has certainly been very general, and Dr. Wilson's letter, so far as we know, was the first elaborate attempt to correct the error, although many, guided simply by the dictates of common sense and simple justice, have thought that the view which he argued against, and as it seems has successfully refuted, was wrong and ought not to be the doctrine of the Constitution. Our readers may, perhaps, remember the howl of wrath and contumely with which not only the *Gazette*, but several other of the copperhead journals in the interest of the rebels, hailed the pamphlet whose doctrines has now been sanctioned by the Supreme Court of the District of Columbia. Wrath and ridicule they had in abundance, but no arguments against it. The opinion of lawyers generally, the interests and wishes of rebels and traitors everywhere, was against the doctrine, but nowhere was a solid argument advanced or suggested—nowhere, so far as we have seen, so much as a serious attempt to answer the reasoning of Dr. Wilson's letter.

Judge Wylic, if we remember rightly, is a Virginian by birth and education, and his appointment was objected to at the time it was made by many republicans, on the ground that he was "*a border-state man*," and not in sympathy with the general policy of the Government for putting down the rebellion. He acknowledges himself, that he had been of a different opinion with regard to the constitutionality of the absolute forfeiture of real estate, but that recent investigation and arguments had satisfied him that his opinion, and the one generally held, was wrong. We regard this decision as a great triumph, and one for which our townsmen, Judge Foot and Dr. Wilson, have good cause to congratulate themselves for the happy thought which has contributed so essentially to bring it about.—*The Geneva Courier*, Wednesday, July 29, 1863.

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No. LXII.—VOL. 1, p. 366.

*Diary of Lieutenant Alfred Foot, U. S. A., in the form of  
a Letter addressed to his Parents.*

ON PICKET DUTY ABOUT THREE MILES FROM CAMP,  
NEAR FALMOUTH, VA., May 8, 1863.

I wrote you a short letter yesterday to assure you of my safety during the late campaign. Our regiment was ordered on picket this morning. I took a few sheets of paper and my lead pencil, thinking that I would have an opportunity to write you. I hope this letter will be as acceptable as if it were written in ink. I am seated on a log, and will give you a description of our late campaign, taken from my diary, but I do not wish this letter to go outside of the family. *April 27th.*—I mistook the General (a call to strike tent and fall in, ready to march), for drill call. Our regiment struck their tents at 10 A.M., and at 10½ A.M. we were on the march. We halted several times during the day, and have now halted for the night about eight miles from our old camp. We are encamped upon the same grounds that our regiment was encamped upon last November. We had a very pleasant march, as the roads were in an excellent condition. *April 28th.*—Started again this afternoon at 3 o'clock, and marched until 11½ P.M., distance about nine miles. We are now about 8 miles from Kelly's Ford, which we will probably cross to-morrow. It

has rained the greater portion of the afternoon. It is now about 12 o'clock at night, and I must visit the camp, as I am officer of the day; and will then retire, as I am very tired. We will probably be in action to-morrow. May God preserve me in the coming battle is my earnest prayer. *April 29th.*—We were on the march at 7 o'clock A.M., marched eight miles, and crossed Kelly's Ford on the Rappahannock river; halted about ten minutes, marched ten miles, and crossed Ely's Ferry on the Rapidan river. We all had to ford the river pantaloonly—was a funny sight. The water was about four feet deep, and dreadful cold. It has rained all the afternoon, and is still raining. We are now bivouaced for the night about a quarter of a mile from the Rapidan. Saw this morning about forty rebels that were captured by our cavalry. They are a dirty specimen of southern chivalry. *April 30th.*—Started again this morning at 5½ o'clock, and marched about seven miles towards United States Ford, where there was a strong force of the rebels; when we arrived within a quarter of a mile from the Ford we discovered that the rebels had departed. We countermarched, marched about four miles, and are now bivouaced for the night in a small woods about nine miles from Fredricksburgh. We have marched about twelve miles to-day. It has rained all day, consequently the roads are in a dreadful condition. We will undoubtedly be in a fight to-morrow. *May 1st.*—Shells are now being rapidly fired into us. We are now lying in line of battle on the ground. It is 12 o'clock—am thinking of my God. We have advanced about three-quarters of a mile amidst very severe fighting; have lost ten men, two of whom were of the color guard. We are now in a small woods resting till 6½ o'clock. We are now occupying the same grounds that we held last night. We can distinctly see the rebels about half a mile from us in the woods. Weeks' artillery battery is now shelling them. We have had rather severe fighting to-day, and will have probably a good deal more before to-morrow; musketry firing is now very severe close by us. My life is in the hands of my God—to Him I entrust all. Captain Temple, of the 17th infantry, was killed this morning; he was a schoolmate of mine at Dr. Reed's. The enemy made an attack this evening at 10 o'clock upon General Hooker's headquarters in three columns—thirty-four pieces of artillery opened upon



them—the slaughter was dreadful. *May 3d.*—Left our camp last night at 12 o'clock, marched the greater portion of the night, and are now bivouaced in a small woods about three miles from where we were last night, and are now patiently waiting for the enemy to come and attack us, which they must do or fly, as they have no way of obtaining provisions, as their communication with Richmond is cut off. Our regiment is now engaged in building an abatis. 7.20—Very hard fighting is now going on all around us. We are now drawn up in line of battle awaiting them. The firing of both musketry and artillery is terrific—God grant that we may be successful. Shells are falling all around us. I may possibly be killed to-night—good-bye all—God, in thee I put my whole trust. Lay under arms all night, but were not attacked. *May 3d, 5½ A.M.*—Musketry firing very heavy about a quarter of a mile from us. We are expecting to be attacked every moment. 4 P.M.—Have heavy breastworks thrown up in front of our regiment. Our pickets have been driven in, and we will undoubtedly soon commence. We occupy the centre of the line of battle. The enemy have attempted to drive in both our left and right, but were repulsed with heavy loss. 6½ o'clock P.M.—Volunteered to go on picket duty; have command of ninety men from our regiment; have our pickets stationed about four hundred yards in advance of our breastworks; 9 o'clock at night my pickets were driven into the reserve, or rather a portion of them. I formed those that were driven in with a part of my reserve into a line of skirmishers, and advanced and now occupy my old grounds—did not see anything of the rebels. One bullet passed within about a yard of me; do not think we will be attacked to-night. Everything has been quiet during the night with my pickets, but, of course, I could not sleep any. *May 4th, 4 o'clock P.M.*—My pickets advanced about a quarter of a mile half an hour ago; sharp firing has been going on for some minutes between our pickets and the enemy's. Two bullets passed within a few inches of me; they were doubtless fired at me. I had rather a narrow escape a few minutes ago. I saw a bayonet glisten in the sun, and went about fifty yards in advance of my pickets to see what it was—a bullet whistled close by my head—I retired in good order to my proper place, and am now seated on a log, about five yards in the rear of my pickets, thinking of dear ones far away.

Our pickets have just been retired and I am now in camp. During the dangers of to-day, my God was constantly before me. Many prayers were silently offered to Him, not only for my preservation, but for all those around me. *May 5th.*—There was quite severe musketry firing on our right wing this morning. 4 o'clock P.M.—From what I have heard, and from present appearances, I should not be surprised if we made a retreat before to-morrow. We had a dreadful rain this afternoon; we are all wet to the skin. One of our pickets has just been brought in badly wounded. 7 o'clock P.M.—We have just received orders to move at a moment's notice, and do so as quietly as possible. As it is impossible for us to keep warm without moving, I do hope that we shall move. 9 o'clock P.M.—Orders have just been received that we will not move to-night, and to endeavor to make ourselves as comfortable as possible, which I am sorry to say is an impossibility. *May 6th.*—We were ordered at 2 o'clock this morning to fall in, and were soon on the move. It is still raining very hard. The roads are in a perfectly dreadful condition. 7 A.M.—We have halted for a few minutes. The United States Ford is in the distance, and I hope we will soon cross the Rappahannock in safety. 8 o'clock.—We are now drawn up in line of battle and expect an attack very soon. 9 o'clock A.M.—We are all safely across the Rappahannock river, with our faces turned towards our old camp-grounds. We are in excellent spirits, although the mud is up to our knees. 8 o'clock P.M.—We arrived in camp near Falmouth at 6 o'clock P.M. Everything looks natural and appears like home. I have taken a bath, had my supper, and shall immediately go to bed, but not before first thanking God for my preservation.

Thus ends my diary since my last letter to you, which was written the day of our departure.

What was the cause of our retreat I am unable to say. There are various rumors—one that the cavalry did not cut the communication with Richmond; another that the rebels were reinforced by forty thousand fresh troops from Richmond. Of course I have nothing to say, as it is not my place to criticise the movements of the army. We are now under orders to be ready to move at a moment's notice, and to furnish ourselves with eleven days' rations. Where our destination is I am unable to say

Please recollect what I said in the forepart of this letter, and oblige me by not sending it around the country.

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No. LXIII.—VOL. 1, p. 369.

*Re-election of President Lincoln.*

Judge Foot presided at the Union meeting, and on taking the chair, said: The approaching Presidential election will determine the ability of the people of this country to govern themselves. It will test the practicability of the great experiment of self-government which we are making on this continent. There can be no doubt, that were it not for the disturbing element of slavery, our experiment of self-government would now be progressing peacefully and successfully as it has hitherto, from the formation of the Government to the breaking out of the rebellion of the slaveholders. This Government is now undergoing a trial, of which the history of the world affords no parallel. It is grappling with the strongest rebellion which ever assailed any Government, and if it shall prevail and suppress the rebellion, it will prove itself the strongest Government on earth in war, as it has already proved itself the most benign in peace; and it certainly will prevail, unless the next election shall show there are more flunkies and traitors in the loyal states than there are true men and patriots. Of this, however, I have no fear, for my belief is, that the candidates of the Chicago convention will not receive the electoral vote of a single state, unless, perhaps, that of Kentucky, where a majority of the people appear to think more of the ignoble luxury of lounging away their lives in idleness, and compelling the negroes to work for and wait upon them, than they do of our precious national emblem, the "*stars and stripes*," which our brave and patriotic soldiers have with true loyal love named "*OLD GLORY*."

But my purpose is not to address you at length. I design only to suggest one or two thoughts for your consideration, and say a few words to our Irish neighbors, many of whom, I am happy to see, are present.

1st. Sovereign power in every government is vested somewhere. In monarchies, generally in the king. In empires, in the emperor. In our country it is vested in the people. In monarchies and empires the will of the sovereign power is generally expressed in decrees, made and proclaimed by the king and emperor. In our country the will of the sovereign power is declared by a vote. The people declare their will through the ballot-box, and the vote of the majority determines what is the will of the people.

If the decree of a king or emperor is resisted by a portion of his subjects, and he has not power to enforce it, his government is destroyed, and he ceases to be king or emperor. So in our republican government, if the will of the majority is resisted by the minority, and the majority are not able to carry out their will, then our Government is destroyed and we are no longer a nation. Four years ago the people of the United States declared by their vote, legally given, that Abraham Lincoln should be President of the United States for four years from the 4th of March, 1861. The minority resisted this decision of the majority, and by reason of that resistance Mr. Lincoln has been President for four years of only a part of the United States. Unless, then, we keep him by a re-election in the office where the people placed him four years ago until he is President of the whole United States, the will of the people is defeated, the very basis on which our Government rests, viz., that the majority shall rule, is destroyed. We have no longer a Government, and are no longer a nation. Whatever differences of opinion there may be among us in respect to the policy of Mr. Lincoln and his administration, the true lover of his country and of her institutions will not let those differences prevent him from maintaining the great principle upon which our whole system of Government rests.

2d. It has been pretty clear from the beginning of the rebellion, and is now so obvious that no one pretends to deny it, that the aristocrats of England and France, and especially those of England, earnestly desire the dissolution of our Union and the destruction of our Government. They detest a government by the people where all are equal, and where all have a right to vote and express their opinions. Our system of Government and its wonderful success are constant eye-sores to the privileged orders

of England and France, and they have aided the rebels in overthrowing it as far as they dared. The aristocrats of England and France are our enemies in Europe, and the rebels are our enemies at home.

Now, on which side are our enemies found in the approaching Presidential election? They are all for the Chicago platform, and the election of McClellan and Pendleton, and they place their support of these candidates on the ground that their election will secure the independence of the rebel states, and thus destroy our Union and Government.

3d. A few words to our Irish neighbors. You are asked, under the name of democrats, to vote for McClellan and Pendleton, because, you are told, they are democrats, and were nominated by a democratic convention. This honored name is used to mislead and deceive you, and no other evidence of the deception need be given you than the fact that, under that name, you are asked to join hands with the aristocrats of England, who have been the oppressors of Ireland for a century, and elect the candidates of the Chicago convention, for the purpose, as those aristocrats avow, of destroying our Union and Government. When before did you ever hear that the democratic party of America and the aristocrats of England were political friends and thought alike on matters of government? No, my neighbors, be not deceived; and if there is a drop of true Irish blood in the arm of any Irishman, that arm will not offer a ballot at the next Presidential election for these friends of the aristocrats of England.—*The Geneva Courier*, Wednesday, October 12, 1864.

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No. LXIV.—Vol. 1, p. 371.

*Account of Alfred after Wounded and Surgical Operation.*

CAMAC HOSPITAL, PHILADELPHIA,  
Sunday, A.M., August 28, 1864.

MY DEAR DAUGHTER:

In the absence of your mother I address this letter to you.



This is the first hour since leaving home that I have been able to put pen to paper. As you know, I left home last Wednesday evening, at 8½ o'clock, rode all night, and reached New York the next day at 12 o'clock M. Stopped at the Astor House. Attended to some individual business, and at 4 o'clock P.M. left for Philadelphia, having received a telegram from home that I should find Alfred there. Reached Philadelphia at 8½ o'clock that evening, and stopped at the Merchants' Hotel. Learned that the steamer *Atlantic*, with Alfred and several hundred wounded officers and soldiers, had arrived about an hour before, and lay down the bay a mile or two below the navy-yard. Went down to the dock near the navy-yard, hired a boat, and went on board the *Atlantic*. A small steamer lying by her side had her deck covered with wounded men on mattresses, being the third load she had taken from the steamer to the shore. All the officers had gone ashore in the two first loads except five : learned Alfred had gone in the second load, and that he had been carried from one steamer to the other on a stretcher. This was the first intimation I had of the severity of his wound. Returned immediately to the shore, and went to a large saloon, which had been prepared and was sustained by liberal patriotic citizens for the reception of the wounded who arrived by water. Could not find Alfred there, and learned he must have been carried to the Citizens' Hospital, at the corner of Broad and Prime streets, a mile or more distant. Not being able to obtain a conveyance, walked the distance, piloted and accompanied by a man of the name of McElroy, whose wife was a Miss Foot, he being induced to offer his aid on account of the name of the officer for whom I was inquiring. This hospital is a volunteer institution sustained by contribution, and intended for the reception of the wounded till they can be conveyed to the governmental establishments. Found a large number of wounded officers there from the *Atlantic*, but their names had not yet been registered, and could not therefore ascertain if Alfred was there. So I obtained leave to go through the wards and look for him. Examined the faces of from one to two hundred young men, most of whom were asleep, being fatigued by removal from the steamer. Could not find Alfred and gave up the pursuit for the night. As I came out of the hospital I observed the attendants removing a wounded officer

from an ambulance with great care, and who was evidently badly wounded. Not dreaming it could be our dear Alfred who was so badly hurt and so feeble, I stepped up to the ambulance and asked an attendant, who seemed to have charge of the removal, in a low tone of voice, who was the officer they were removing. Alfred heard my voice, and said, "Father, is that you?" The meeting was mutually acceptable. I saw him carried to a nice cot in an airy location; found his wound had not been dressed for twenty-four hours; that he had eaten nothing since he was wounded, then a week; had been sustained by sherry wine, but had had none during the day; that his removal from the saloon to the hospital in an ambulance had hurt him very much; knowing that it would, he had offered ten dollars to be carried on a stretcher, but the person in charge would not allow it. By this time it was 12 o'clock at night. Under these circumstances I hired a carriage and went after Dr. McClellan (there being no surgeon at the hospital that night), whom I learned was one of the most eminent of his profession in the city. He had just been called out, but I persevered and found him. Went to a celebrated restaurant, purchased a bottle of best sherry wine, two pairs of frog's legs delightfully cooked, and some crackers, and thus prepared returned to the hospital. The wound had been dressed by a nurse in the hospital before I returned. Dr. McClellan examined it, said nothing more was required that night, gave Alfred a glass of wine and some food, and left him comfortable. Took Dr. McClellan home, and reached my hotel at 3 o'clock in the morning. Arranged with Dr. McClellan to find a private residence in which I could place Alfred under his charge, and was to call the next morning at 9 o'clock for that purpose. Called accordingly, which was last Friday morning. The Doctor said he had been thinking the matter over; that, all things considered, more especially the nature of the wound, the unusual and severe operation, and Alfred's reduced condition, I had better get him into this hospital if I could, being one solely for officers of high grade and merit, who were badly wounded, pleasantly situated and under charge of Dr. O'Leary, one of the best and most eminent surgeons of this state; that it was generally full and admission to it difficult; that Dr. Campbell was the chief medical director of this department, and application must be made to

him. So he gave me a letter to Dr. Campbell. I found a warm friend in him. He was from Albany, and a son of Archibald Campbell, many years deputy secretary of state, and an acquaintance and friend of mine of more than forty years standing. Alfred was entitled to admission to this hospital if there was a vacant bed. Dr. Campbell ordered one provided if necessary. But the result showed there was a vacant one most eligibly located. Having succeeded in getting the requisite orders and papers, I proceeded to the Citizen's Hospital and arrived there about 10 A.M. After all the officers except Lieutenant Perry and Alfred had been sent to the great hospital ten miles in the country, and with one thousand patients, and Lieutenant Perry had been sent to a friend's house, viz., this hotel, Alfred was carried carefully out, placed on a stretcher in a special ambulance, and with the soldier, who is ordered to attend him till he reaches home, by his side fanning him, and myself in front with the driver, we proceeded on a walk for three miles to this hospital, which is just out of the city on high ground, with about fifteen patients. After seeing Alfred located, and engaging a room near by for your mother, having first obtained Dr. O'Leary's permission for your mother to nurse Alfred, I returned to the city and telegraphed your mother to come on. After a fruitless search on the steamer for Alfred's baggage, which contained his sword and pistol, and which had been lost or mislaid on his transfer from the steamer, I returned home about 8 o'clock, and after tea retired and had a good night's rest, being the first since leaving home. Yesterday (Saturday) morning went up to the hospital after breakfast; found Alfred comfortable. Called on Dr. Campbell, left with him a description of the lost luggage, and he gave orders to search for it; but concluded to attend to it myself. Went to McClellan Hospital, could not find it, then to the Citizen's, and there found it had been sent to the McClellan Hospital, where I intend to go to-morrow for it. In the afternoon went to the office of the Sanitary Commission, got a hospital shirt for Alfred, and desired some articles to be sent to the hospital for the patients. Went up to the hospital to see Alfred and carry the shirt just at sundown. On my return found your mother had come and gone to the hospital. After supper went up and saw her. Came home about 10 o'clock P.M. Have had a

good night's rest. This morning, immediately after breakfast, went to your mother's room and the hospital—took to the former her trunk and all Alfred's things in my possession. Then returned to the hotel, and about 10 o'clock went back to the hospital, introduced your mother to Dr. O'Leary, and she was inducted into office as nurse for Alfred, and allowed free access to him, which the steward of the hospital denied her this morning. Shall spend to-morrow forenoon searching for Alfred's baggage, and start for home in the afternoon. Do not send this letter away, but keep it, as it is my diary; send copies, if anything.

Affectionately yours,

SAM'L A. FOOT.

To Miss MARY FOOT.

No. LXV.—VOL. 1, p. 378.

*The Trial of the Assassins.*

*To the Editor of the New York Times:*

Your article this morning on "The Trial of the Assassins—Action of the Government," is quite satisfactory as far as it goes, showing, as it clearly does, that the crime is one of military cognizance, and triable by a court-martial. But you ought to have gone further, and shown that justice could not have been done, and cannot now be done, if the court-martial should be dissolved, and the criminals turned over to the civil courts. In an indictment for a conspiracy, "the venue (place of committing the crime), must be laid in the county where the combination took place" (Chitty Criminal Law, 1143), and the crime must be proved to have been committed at the place where the venue is laid, and if not, an acquittal follows.

In the case of the assassination of the late President, no conspirator could be convicted on an indictment found in the District of Columbia, unless proof could be given that the combination was formed and the criminal became a party to it in the District of Columbia. If the conspiracy was formed in Canada,

Richmond, or Maryland, or a person became a party to it by contribution of money or otherwise outside of the District of Columbia, he could not be convicted there.

So these accessories after the fact down in Maryland cannot be convicted by indictment and trial, except in the county where the crime was committed.

How unjust and absurd, too, to berate the true and faithful men at Washington for taking the only course in which there is the least chance of reaching the truth and arresting and punishing the guilty.

Respectfully, your obedient servant,

SAMUEL A. FOOT.

NEW YORK, NO. 106 BROADWAY, *May 13.*

No. LXVI.—VOL. 1, p. 378.

*Position and Reconstruction of Rebel States.*

GENEVA, *August 10, 1865.*

*To Hons. Ira Harris and E. D. Morgan, Senators in Congress.*

GENTLEMEN:—Relief from active and constant professional duties has given me an opportunity to bestow some thought on the important questions which have arisen on the reorganization of the states, the citizens of which have been in armed rebellion against the General Government.

The Constitution which our fathers formed and adopted for us, has been found adequate for a war of unexampled proportions, and if my reflections have not led me to unsound conclusions, it will be found fully adequate for the solution of all the great and embarrassing questions which have already, or may hereafter, arise on the reorganization of the states mentioned, and on the settlement upon a peaceful and just basis of that portion of our country lately in rebellion.

It is not my design to discuss fully those questions, but to state the principles on which their solution depends.

A state, in our system of government, is a *body politic*, formed



and created by the people in the exercise of their sovereign power; and hence the people of a state, and they only, can alter or amend it; and hence, too, the crimes of the citizens, many or few, of a state, cannot affect this body politic called the state. The offending and criminal citizens may lose and be deprived of their rights, personal and political, still the legal and political existence, termed the state, remains intact. The Constitution of the United States in numerous instances recognizes the existence and perpetuity of the states; indeed, the machinery and action of the General Government rests upon and is moved by the states—they enter into and form essential parts of it—they, therefore, must be as permanent and enduring as the Constitution itself, and can no more be annihilated than our glorious Union.

These positions being self-evident, the duty of the General Government, at the present time, is simply and solely to protect and aid the loyal citizens of those states whose governments were overthrown by rebellious citizens, to reorganize their governments and bring them into harmonious action with the General Government.

In the discharge of this duty, several important and embarrassing questions arise respecting the power of the General Government, and the manner in which, and the extent to which, it shall be exercised.

To reach a solution of these questions, the first step is to ascertain the power and duties of the states; and the second step is to ascertain the powers and duties of the United States.

In theory and practice under our system of government, the sovereign power is vested in the people. They only can exercise it, and the several states and the people thereof retain all that power not surrendered and delegated to the United States.

Sovereign power embraces a long list and wide range of specific powers, all of which are in their nature sovereign. Among them is clearly the power to determine who shall, and who shall not, be a citizen of a state or government. This item or portion of sovereign power is, beyond all doubt, reserved to the several states and the people thereof.

One ground of just complaint against Chief Justice Taney and his pro-slavery associates, was the doctrine advanced by him

and approved by them, in the Dred Scott case, that a state had not a right, by legislation, to determine who should be a citizen thereof. This doctrine was strongly and rightfully assailed, on the ground that it deprived the states of one of their most important reserved powers.

As the major includes the minor of every proposition, it is indisputable that a state may determine on what terms and conditions, and with what rights or disabilities, a person may become a citizen thereof; and this power, unrestricted, would enable a state to exclude from citizenship, or a right to vote, a race, or all except oldest sons, and thus establish an oligarchy, or introduce into the state the right of primogeniture, one of the worst features of a monarchy.

But do the states possess and can they exercise this portion of sovereign power without restriction, and if not, by whom and how shall they be restrained? This question tends to an inquiry and ascertainment of the powers and duties of the General Government.

Passing without comment the restriction upon the states in the naturalization of aliens, the fourth section of the fourth article of the Constitution of the United States begins with this clause, "The United States shall guarantee to every state in this Union a republican form of government."

A guaranty, in the broad and popular sense as here used, is an assurance, pledge, and engagement by one party to give to another party some benefit or thing of value, and which the other party asks and engages to accept. In the present case, the people of the United States, by adopting this clause of the Constitution, assured the several states and the people thereof, and pledged and engaged, that the United States should secure to them a republican form of government; and the several states and the people thereof, by adopting this clause of the Constitution, asked for and accepted this assurance, pledge, and engagement of the United States, and in so doing engaged and pledged themselves to accept of the government the United States thus acquired the power and assumed the duty to guarantee to them.

The manner in which that power of the United States is to be exercised and this duty performed can create no embarrassment; for the General Government may select any of its appropriate

modes of action, or adopt them all. Legislation may be resorted to and laws passed to effect the object. Either or both houses of Congress may refuse to admit members seeking to enter them from states not having a republican form of government—the executive branch of the Government may refuse to recognize a state without such a government—and the judiciary, on a case coming before it involving the question, may decide it; and I can well imagine many cases in which that question would be distinctly presented.

It now only remains to ascertain what is a “republican form of government.”

On this point there may be a diversity of opinion, but there is one feature of such a government, on which all will agree, and that is, that the sovereign power is vested in the people, and can be exercised only by them. They exert their power, and their will is expressed, under our system, through the ballot-box. While a state may, by legislation, prescribe the methods and make suitable regulations for ascertaining the will of the people, and in doing so, may exclude those physically and mentally incompetent, as infants, idiots, &c., can it exclude from a participation in the expression of that will and the exercise of that power, a race, on account of color, or religion, or birth, or height, or weight; and if it does, is its government republican in form? Can gentlemen elected under an exclusion of a portion of the people from the right of suffrage on such grounds, or any of them, rightfully claim to enter Congress as representatives from a state with a republican form of government? There would seem to be but one answer to such a question.

But suppose the rebels have influence and numbers sufficient in one of the states to control a convention of the people and the legislature, and to set up a government and pass laws establishing slavery, or excluding from citizenship all persons descended in the remotest degree from Africans, or Irishmen, or Englishmen, and should be willing to live under the laws, and bear their proportion of the burdens of the General Government, without being represented in Congress and having a voice in the enactment of those laws and the laying of those burdens, how are they to be reached and the evil corrected? Easily—by appropriate legislation and executive action in executing it. If such

legislation is challenged as unconstitutional, bring it to the test before the Supreme Court of the United States.

*Gentlemen* :—Is not the way clear, under and in strict accordance with the Constitution, to reorganize the states whose citizens revolted, on principle of entire equality before the laws, and with full protection to the oppressed and faithful race, whose loyalty was not stained by a single case of treachery during the four years of war ?

Respectfully, yours,

SAM'L A. FOOT.

—*The Geneva Courier*, Wednesday, August 16, 1865.

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No. LXVII.—VOL. 1, p. 383.

*Republican Form of Government.*

The subject assigned for this evening, and on which I have been requested by the Association to express my views, is—

What are the distinctive features of “a republican form of government” which “the United States shall guarantee to every state in this Union,” as ordained in the fourth section of the fourth article of the Constitution of the United States ?

No attempt will be made at a learned discussion of the sources of power, or the origin of government ; nor will any effort be made to draw the lines of distinction between the different kinds of government which have generally prevailed among men, consisting, in their extremes, of despotisms on the one hand, and democracies on the other ; nor will a historic review of the ancient and modern governments called republics be given, nor any exposition of their peculiar features be attempted ; but I shall endeavor to ascertain what kind of government our fathers had in view, and what they meant, when, in the convention of 1787, they inserted in our Federal Constitution the clause under consideration, and when, in conventions of the several states, they adopted it, without proposing any modification or amendment of

it, as they did of several other clauses with which they were not entirely satisfied.

Our fathers, in their Declaration of Independence, asserted three fundamental truths :

1. "All men are created equal.
2. "They are endowed by the Creator with the inalienable rights of life, liberty, and the pursuit of happiness."
3. That governments derive "their just powers from the consent of the governed."

They further assert, in their declaration, that "governments are instituted among men" to secure the rights thus solemnly declared. This declaration was adopted by Congress, joyfully received by the nation, and widely circulated in this country and Europe. Within a few years afterwards the thirteen colonies, who had united to resist the domination of Great Britain, became separate, independent, and sovereign states. Every reader of our history knows that this was accomplished by each colony forming a government for itself, and thus becoming a body politic, called a state. The method pursued in each colony was to elect delegates to a convention, who formed a written constitution, and submitted it to the people of the colony for adoption. The colonies of Rhode Island and Connecticut, having liberal charters from the English crown, did not abolish them, and only made such alterations and additions as their new and independent condition required, and were necessary to create them states, and bring them into the sisterhood of United States under the old confederation.

Before directing our attention to the constitutions of the old thirteen states as first framed and adopted, it will aid us in our object to remark, that the elementary idea of government implies the existence of a power resting somewhere, to prescribe rules of action for the governed. This power is rightly called sovereign, and in theory and practice, under our system of government, is vested in the people. This is but another mode of stating the great principle asserted in the Declaration of Independence, that "governments derive their just powers from the consent of the governed;" and that principle may be expressed in these few words—*sovereign power is vested in the people.*

"A collection of the constitutions of the thirteen United



States of America," was published by order of Congress in 1783.\*

This collection contains, in full, the bill of rights and constitution of each state as first adopted. The whole thirteen, thus collected and published, were framed under the inspiration of the Declaration of Independence, and the holy, exalted, and inflexible spirit of freedom, to which our fathers "pledged their lives, their fortunes, and their sacred honor."

An examination of these bills of rights and constitutions will clearly show, that the government of each state adopted and is founded on the three great and fundamental principles set forth in the Declaration of Independence, and before stated.

Under the *first*, viz.: that "all men are created equal," there is no distinction in civil rights between men on account of race or color, nor any distinction between them in political rights, with only two exceptions, viz., South Carolina and Georgia. The constitution of the former contains a provision that "any white man, and no others," shall be allowed to vote, and the constitution of the latter a provision, that "all white persons" shall be allowed to vote.

Under the *second*, viz.: that "all men are endowed by their Creator with the inalienable rights of life, liberty, and the pursuit of happiness," no privilege, protection, or advantage is bestowed on any class or portion of the people over another; nor is any class or portion of the people deprived of any privilege, protection, or advantage which others enjoy. All are equal before the law. No one is too high to feel its power, and no one too low to receive its protection.

And under the *third*, viz.: that "governments derive their just powers from the consent of the governed," the principle is fully recognized and avowed, that the people are the source of all governmental authority; that they are the depository of sovereign power, and their will, when legitimately and fairly expressed, supreme. These state governments recognize the whole people as holding the sovereign power, and do not regard it as vested in

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\* The copy to which the writer has had access is in the library of the Historical Society of the city of New York.

a portion, to the exclusion of any other portion, however small or humble such other portion may be.

An examination of these thirteen constitutions will also show, that two other features of government pervade them all—one, representation carried out in practice by the votes of the people; the other, that no political office is held for life, but all such offices are filled for short and specified terms, and the incumbents thus held accountable to the people.

These thirteen governments, the principles on which they were founded, and which were incorporated in their bills of rights and constitutions, were well known to the delegates to the Federal Convention, which assembled in 1787 to form our national Constitution.

Now let us trace the history of this fourth section of the fourth article of the Constitution, and hear what was said in the convention concerning it, and thus learn, if we can, what sort of government our fathers intended by this clause to guarantee to each state.

On the 29th day of May, 1787, Mr. Randolph, a delegate from Virginia, opened the main business of the convention, and introduced a series of resolutions containing the principal provisions, which, in his judgment, ought to be incorporated in the new Constitution.\* His 11th resolution is in the following words:†

*“Resolved, That a republican government and the territory of each state, except in the instance of a voluntary junction of government and territory, ought to be guaranteed by the United States to each state.”*

On the 5th of June the convention, in committee of the whole, had under consideration the resolutions introduced by Mr. Randolph. On reaching the 11th resolution, it was read, when

*“Mr. PATTERSON, a delegate from New Jersey, wished the point of representation could be decided before this clause should be considered, and moved to postpone it; which was not opposed, and agreed to, Connecticut and South Carolina only voting against it.”‡*

On the 11th of June the convention, again in committee of

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\* Mad. Papers, 723.

† Ib., 734.

‡ Ib., 794.

the whole, took up this resolution. After amendments and debate,\*

“Alterations having been in the resolution making it read, that a republican constitution and its *existing laws* ought to be guaranteed to each state by the United States,” the whole was agreed to, *nem. con.*†

On the 13th of June the committee of the whole rose, and by Mr. Gorham of Massachusetts, the chairman, reported to the convention the plan of a national government, which, in the opinion of the committee, ought to be established. This plan was in the form of nineteen resolutions.‡

The sixteenth of these resolutions is in the following words:

“*Resolved*, That a republican constitution and its existing laws ought to be guaranteed to each state by the United States.”§

On the 20th of June, the convention had under consideration the report of the committee of the whole before mentioned. A debate ensued. Colonel Mason of Virginia took part in it. In the course of his speech he said :

“The mind of the people of America, in two points, he was sure, was well settled—first, in an attachment to republican government ; secondly, in an attachment to more than one branch in the Legislature. Their constitutions accord so generally in both these circumstances, that they seem almost to be preconcerted. This must either have been a miracle, or have resulted from the genius of the people.”||

On the 18th July, the following proceedings were had in the convention : ¶

The sixteenth resolution, “That a republican constitution and its existing laws ought to be guaranteed to each state by the United States,” being considered,

\* *Ib.*, 844.

† The reader will not fail to remark that the then existing governments and laws of the states were regarded as the objects of the guaranty.

‡ *Mad. Papers*, 858.

§ *Mad. Papers*, 861. Here again the convention clearly indicated the then state governments and their laws as the object of the guaranty.

|| *Mad. Papers*, 913.

¶ *Ib.*, 1139.

Mr. GOUVERNEUR MORRIS thought the resolution very objectionable. He should be very unwilling that such laws as exist in Rhode Island should be guaranteed.

Mr. WILSON: The object is merely to secure the states against dangerous commotions, insurrections, and rebellions.

Col. MASON: If the General Government should have no right to suppress rebellions against particular states, it will be in a bad situation indeed. As rebellions against itself originate in and against individual states, it must remain a passive spectator of its own subversion.

Mr. RANDOLPH: The resolution has two objects—first, to secure a republican government; secondly, to suppress domestic commotions. He urged the necessity of both these provisions.

Mr. MADISON moved to substitute “that the constitutional authority of the states shall be guaranteed to them respectively against domestic as well as foreign violence.”

Doctor McCLURG seconded the motion.

Mr. HUSTON was afraid of perpetuating the existing constitutions of the states. That of Georgia was a very bad one, and he hoped would be revised and amended. It may also be difficult for the General Government to decide between contending parties, each of which claim the sanction of the constitution.

Mr. L. MARTIN was for leaving the states to suppress rebellions themselves.

Mr. GORHAM thought it strange that a rebellion should be known to exist in the empire, and the General Government should be restrained from interposing to subdue it. At this rate an enterprising citizen might erect the standard of monarchy in a particular state, might gather together partisans from all quarters, might extend his views from state to state, and threaten to establish a tyranny over the whole, and the General Government be compelled to remain an inactive witness of its own destruction. With regard to different parties in a state, as long as they confine their disputes to words, they will be harmless to the General Government, and to each other. If they appeal to the sword, it will then be necessary for the General Government, however difficult it may be, to decide on the merits of their contest, to interpose and put an end to it.

Mr. CARROLL: Some such provision is essential. Every state ought to wish for it. It has been doubted whether it is a *casus fœderis* at present; and no room ought to be left for such a doubt hereafter.

Mr. RANDOLPH moved to add, as an amendment to the motion, “and that no state be at liberty to form any other than a republican government.”

Mr. MADISON seconded the motion.

Mr. RUTLEDGE thought it unnecessary to insert any guarantee. No doubt could be entertained but that Congress had the authority, if they had the means, to co-operate with any state in subduing a rebellion. It was and would be involved in the nature of the thing.

Mr. WILSON moved, as a better expression of the idea, "that a republican form of government shall be guaranteed to each state; and that each state shall be protected against foreign and domestic violence.

This seeming to be well received, Mr. MADISON and Mr. RANDOLPH withdrew their propositions, and on the question for agreeing to Mr. WILSON's motion, it passed, *nem. con.*\*

On the 6th of August a committee of detail reported to the convention the constitution as then agreed on, in the form of twenty-three articles; the eighteenth of those articles was in the following words: †

ARTICLE 18.—The United States shall guarantee to each state a republican form of government; and shall protect each state against foreign invasions, and, on the application of its Legislature, against domestic violence.

The form of this guaranty was not afterwards changed, nor was it again the subject of debate.

It is evident from this history of it, that the convention regarded the then existing governments of the thirteen states as republican in form, and that the design of the guaranty was to insure to them the enjoyment of like governments forever. This design is the more obvious, when we advert to the clauses of the section which follow the guaranty, and in which the duty is imposed on the United States of protecting the states from invasion and domestic violence.‡

On the preceding data, we may safely conclude that the *distinctive features* of "a republican form of government," which "the United States shall guarantee to every state in this Union," are:

*First.* That sovereign power is vested in the people.

\* The reader cannot fail to see how clearly our fathers foresaw what has actually occurred within the last five years, and how wisely they provided for it.

† Mad. Papers, 1241.

‡ It would seem to be quite clear that the convention did not contemplate the possibility of the destruction of a state, but, on the contrary, did contemplate the possibility of a state being deprived, for a time, of its government by invasion or domestic violence, and when so deprived, intended the United States should restore it.



*Second.* That all men are entitled to equal rights under and before the law.

*Third.* Representation, in all departments of government.

*Fourth.* Tenure of political offices—short and specific terms.

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No. LXVIII.—VOL. 1, p. 383.

*An Act to Guarantee to every State of the United States  
“A Republican Form of Government.”*

Whereas the United States are required by the Constitution thereof “to guarantee to every state in this Union” “a republican form of government;” and whereas it is an essential part of such form of government, that all the citizens of every state shall have equal rights by the laws thereof; and whereas “the citizens of each state are entitled to all privileges and immunities of citizens of the several states”:

*Be it enacted by the Senate and House of Representatives of the United States in Congress assembled,* That every citizen of the United States, and every citizen of every state of this Union, who shall have resided in any state thereof for one year, shall be a citizen of such state.

SEC. 2. *And be it further enacted,* That every male citizen of every state in this Union, who is twenty-one years of age, of sound mind, and not a pauper, nor convicted of an infamous crime, and who can read the Constitution of the United States in the English language, and write his name, and shall have resided in the state of which he is a citizen for one year immediately preceding any election in such state, shall be an elector of all elective officers or legislators chosen at such election; and no person shall be such elector unless he shall have the above qualifications.

SEC. 3. *And be it further enacted,* That this act shall not impair or affect the right of any person who, at the time of passing the same, shall be an elector in any state by the laws thereof.

No. LXIX.—Vol. 1, p. 385.

*Suffrage and Representation Placed on a Truly Republican Basis.*

*To reconcile conflicting opinions, avoid threatened complications, and harmonize and settle the country on a true Republican basis.*

*Resolved*, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, that the following articles be proposed to the Legislatures of the several states as amendments to the Constitution of the United States; which articles, when ratified by three-fourths of the said Legislatures, to be valid, to all intents and purposes, as a part of the said Constitution, viz:

ARTICLE I.—That every citizen of the United States, and every citizen of every state of the United States, who shall have resided in any state thereof for one year, shall be a citizen of the state in which he has so resided.

ARTICLE II.—That every male citizen of every state of the United States, who is twenty-one years of age, of sound mind, and not a pauper, nor convicted of an infamous crime, and who can read the Constitution of the United States in the English language, and write his name, and shall have resided in the state of which he is a citizen for one year immediately preceding any election in such state, shall be an elector of all elective officers or legislators chosen at such election; and no person shall be such elector unless he shall have the above qualifications. But this article shall not impair or affect the right of any person who, at the time of adopting the same, shall be an elector in any state by the laws thereof.

ARTICLE III.—After the census to be taken in the year eighteen hundred and seventy, and each succeeding census, representatives shall be apportioned among the several states which may be included in the United States of America, according to the number in each state of electors qualified as declared in the preceding Article II, and direct taxes shall be apportioned among the several states according to the value of the real and personal taxable property situate in each state, not belonging to the state or to the United States.

In our paper of last week we presented some general considerations in favor of the above plan for settling the pending questions before the country, respecting colored suffrage and representation in Congress.

We now propose to examine more fully these proposed amend-

ments of the Constitution, and give our reasons in favor of each one in the order in which they are presented. We intend to do this in the spirit and with views like those with which Senator Sherman discussed these important questions in his late able speech delivered at Bridgeport, Connecticut. On that occasion, this distinguished senator, speaking of the amendments of the Constitution then under consideration in the Senate of the United States, says:

“ The legislation that we do now is not for this day or generation ; but the government we are now forming is to last, I trust, for all time. When our children and children’s children shall have met the common fate of all—when ages upon ages shall have rolled over the earth—I believe that the Constitution of the United States and the Government we have here founded will stand out as a shining light among the nations, to point the way to Freedom and to exemplify its blessings.”

While we should not overlook the present condition of the several states, and of the whole country, in determining the proper amendments to be made to the Constitution, we should not make them, however, to remove a present and temporary embarrassment, but to meet the condition of this vast country when it shall contain hundreds of millions of people. When that time arrives, and it will come sooner than we now anticipate, it requires no spirit of prophecy to announce the dissolution of the Union and fearful wars, unless the nation shall then speak one language, education be universally diffused, all citizens enjoy equal civil and political rights, and every citizen, of every state, receive the protection, and exercise the rights of citizenship, in whatever state he may choose to locate and establish his residence.

#### FIRST—ARTICLE I.

The necessity and importance of this article will appear from the following facts and consideration:

One of the reserved and undisputed rights of every state in the Union is to determine who shall, and who shall not, be a citizen of it. Consequently a state may allow or deny citizenship to a citizen of the United States, or to a citizen of any other state. All naturalized citizens and all freedmen are citizens of the United States only, and while the states generally are not

only willing but anxious to increase their numbers and productive labor, by receiving into citizenship not only all naturalized citizens of the United States, but in some cases even aliens before they are naturalized, still there have been, and may hereafter be, instances in which a state may refuse citizenship to citizens of the United States, and we may thus have among us a population in the abnormal condition of being citizens of the United States, and yet not citizens of the state in which they live.

No state ought to be unwilling to receive as a citizen any person, or number of persons, on whom the United States has conferred the high honor and valuable privilege of citizenship; and if a majority of the people of any state shall be so unjust or prejudiced as to refuse citizenship to any one who has been lawfully baptized with the name of "An American Citizen," and is entitled to the protection and a share of the glories which emblazon the Stars and Stripes, such state should not be allowed to practice such injustice nor indulge such prejudice.

The provision of the Constitution of the United States, that "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states," gives to a citizen of one state, who shall be casually in or remove to another state, "the privileges and immunities of citizens" of that state, but does not constitute him a citizen of such state, nor give him the right of citizenship therein. A kind, friendly, and hospitable construction and application of the provision of the Constitution would welcome into a state a citizen of a sister state, and, after a brief residence, make him a citizen and give him the rights and privileges of citizenship. Such has been the action of nearly all the states in the Union, but, unhappily, there have been some instances of the opposite course, and, within the last few months, a proposition was made in the Legislature of one of the southern states to deny citizenship to a citizen of a northern state without a residence of five years. Nothing is more likely to embitter feelings, prevent a cordial union of American hearts, and foster diversity of pursuits, sentiments, opinions, manners, and character, than the existence of this power of refusing citizenship to citizens of other states, and the occasional exercise of it.

Our diversity of climate is one of our greatest blessings. When health or interest shall induce a citizen of one section of

the country to change his residence to another section, he ought to be able to do it without the loss or lengthy suspension of his right of citizenship in the state where he intends for the future to live. Interchange of residences, business and social relations, between citizens of different states and sections of the country, should be free, unrestricted, and encouraged. No power should rest anywhere to obstruct or embarrass them. The object and spirit of the constitutional provision which our fathers adopted to accomplish this benign end, should be carried out by adding to it the proposed amendment, which will give to every citizen of the United States, and to every citizen of every state of the Union, the right of citizenship in every other state in which he shall have resided for one year.

## SECOND—ARTICLE II.

### *Educational Qualification.*

The value of this amendment, and the inestimable blessings which its adoption will confer on the country, are almost, if not quite, self-evident. As sovereign power in our country is vested in the people, we have a political axiom which commands universal assent, viz. : “*The intelligence of the people is the foundation on which our institutions rest.*” Hence, every lover of his country strives to disseminate knowledge among the people, and educate the rising generation. With only thirty-one millions of people, we have shed oceans of blood and spent billions of treasure, which would all have been saved if the mass of our southern fellow-citizens had been sufficiently educated to understand their rights and true interests. How then will it be, and where will our safety lie, when we are a nation of one or two hundred millions? Safety then will be nowhere found, and national death certain, unless that immense multitude are educated and sufficiently intelligent to discharge the high duty of self-government. We cannot now, with our present population, and present immigration of uneducated foreigners, keep education up to its former proportionate standard. We are falling behind constantly. The number of those in the country who cannot read and write, in proportion to those who can, is continually increasing. There is a strong probability, indeed almost, if not quite, a certainty, that immigration hereafter will be larger, in proportion



to our native population, than it has been heretofore. This will cause a more rapid increase than heretofore of the proportion of the uneducated to the educated, and, at so early a period as the close of this century, there will be such a host of ignorant voters in the country as seriously to endanger our institutions, and, by the middle of the next century, to render self-government insecure, if not impracticable, unless some efficient measure is adopted to stimulate and extend education among the mass of the people. No measure has ever been suggested, nor do we believe one can be conceived, more effective in accomplishing this object than making the right to vote dependent on the education of the voter, or, in other words, affixing to suffrage an educational qualification. To give to such a measure its full efficacy, and assure the nation of the full and abiding blessings which it will confer, it should be incorporated in, and form a part of, the great charter of our freedom, and should not be left to the varying popular breezes of separate state action. It will secure to the nation the existence forever of the foundation on which our institutions stand, viz.: *the intelligence of the people*. It should, therefore, be as permanent and pervading as any provision in the Constitution.

All will agree that the educational qualification of suffrage should not be less than ability to read and write, and no better test of that ability can probably be suggested than the one contained in the proposed amendment we are considering. The ability to read should also extend to reading the language of the country. The reasons for this are obvious and numerous. The large number of naturalized citizens now in the country, and the still larger number there will be hereafter, who have and will bring their native language with them, and adhere to it, will make our country a national Babel. Unseemly and inconvenient in intercourse and business as this may be, it vanishes from view in comparison with the danger to our institutions which arises from maintaining in the country diversity of language. While we have now towns and counties where foreign languages, manners, customs, irreligious and immoral opinions and practices prevail, we may hereafter have states; and thus our great nation, instead of being homogeneous and forming one harmonious whole, will be divided into different nationalities, unlike in language,

education, manners, usages, and moral and religious opinions. No better remedy for these and other evils springing from the same cause, and no measure better calculated to naturalize and *Americanize* the multitude of foreigners who will adopt our country as their own, can be devised, than to require them to learn and read our language as a condition precedent to their exercise of the right of suffrage. This will bring with it schools, education, thoughts, manners, sentiments and opinions, all of which will be American, and make us one people. Many other considerations might be presented, sustaining the importance and necessity of this feature of the educational qualification; but they will occur to every intelligent reader, and we need not occupy our space in stating them.

#### COLORED SUFFRAGE.

The advocates of giving the right of suffrage to freedmen in the states whose governments were overthrown by the rebellion, may be sure of one thing, and that is, that the just and generous people of the loyal states will never consent to force upon their fellow-citizens in the southern states a measure which they refuse to adopt for themselves. They never will ask the South to give her colored citizens the right of suffrage when they deny it, absolutely or qualifiedly, to their own colored citizens. If these special friends of the freedmen desire, as they do, to render them a real service, they must aid in adopting a practical measure which will receive the assent of the nation, and that is, to allow all colored men, in every state of the Union, to vote, who can read and write. That measure is embraced in the second proposed amendment. Its language is, that "Every male citizen of every state," having the qualifications specified, shall be an elector. This gives to every colored man, who has sufficient intelligence to discharge the duty, a right to vote, and, besides, holds out to him a strong inducement to seek an education for himself and children. Is not this better for the freedmen and the country than to cast upon them at once, and in their ignorance, the highest duty of American citizens. This measure, too, is fair and equal. By it we propose to do ourselves what we ask our southern fellow-citizens to do. While they have such a

large number of colored men among them, it would not be fair, and might be dangerous to their safety and peace, to make every colored man an elector. But give to suffrage the educational qualification mentioned, and the number of colored voters in the several states will not be so very unequal. With that qualification the late slave states would, no doubt, be satisfied, and promptly adopt the proposed amendment.

#### UNIVERSALITY OF THE QUALIFICATIONS OF ELECTORS.

We will first notice the advantages, and then the objections, to this feature of the amendment.

##### *Advantages.*

1. It will increase the value of American citizenship. The nation will establish the qualifications, and confer the right of suffrage. This most valuable right of an American citizen will be protected by national authority, and a knowledge of this fact will increase its value in the estimation of every one entitled to it.

2. It will establish a uniform standard of suffrage throughout the country, and put a stop to all strife among the states to draw emigrants by lowering and cheapening suffrage.

3. It will nationalize suffrage. Instead of their being one standard of suffrage in one state and another standard in another state, there will be one standard for every state, and that one will be THE AMERICAN STANDARD OF SUFFRAGE. It will produce harmony among the states on a most important feature of our system of government, and tend to make us one people and nation.

4. This standard will be enduring, and not subject to change, for slight causes, as is often the case with state standards. It will thus give steadiness and stability to a very important branch of governmental action.

Other advantages might be mentioned, but the above are deemed sufficient to ensure the adoption of this feature of the amendment, unless there are fatal objections to it.

##### *Objections.*

We have not seen these objections stated except by Senator Sherman in his speech in Connecticut before mentioned. The honorable senator states them as follows :

"I may say here, that there is a class of opinions in Congress in favor of taking away from the states the power of determining the qualifications of voters ; but the plan does not meet with much favor. It is a power which the States have exercised each one for itself, and I do not believe they would be willing to yield it. I don't believe Ohio would surrender it. Every state has a different mode of determining who shall vote. You have a mode here which would not do with us at all. In some of the western states they allow naturalized foreigners to vote. Then, again, in some of the border states they don't let the rebels vote. That is different from your plan ; you allow your rebels to vote here. (Laughter.) No one proposes to amend the Constitution so as to take from the states the right to say who shall vote, because we know that three-fourths of the states would reject it, and, therefore, it would not become a law."

Now, with great respect to the distinguished senator, we will ask him if the objections he states are anything more than his belief that Ohio and the other states will not give up their right to determine who shall be voters. Suppose the learned senator is mistaken in his belief, as we hope he is, then it would seem that in his opinion there would be no objection to the measure. This is no more than what we would expect from so enlightened a statesman. Now, let us ask, Why will not Ohio, Missouri, and the other states consent, *not* to surrender to Congress the right to determine, from time to time, who shall be voters in the several states, *but* to determine and settle, in conjunction with two-thirds of both Houses of Congress and three-fourths of their sister states, the qualifications of voters in their own and other states of the Union, and to stand and abide by such determination and settlement, until they are changed in the same way they were formed ?

We do not propose to speculate upon the probability or improbability of the adoption of this measure by the Legislature of Ohio, Missouri, or any other state. We present our reasons in favor of it, in the hope they will produce conviction in the minds of statesmen and patriots.

### THIRD—ARTICLE III.

All agree in the necessity of an amendment of the Constitution, establishing a basis of representation in place of the present one, that having become inapplicable to our country by

reason of the abolition of slavery. What shall be the new basis of representation, is the great question before the country. Although a great many propositions have been offered in Congress, not one of them, nor all combined, appear to meet and satisfy the national exigency. The great defect in them all arises mainly from their adaptation to the present condition of the states of the Union, and the attempt by them to establish a basis of representation which shall remove present inequality and embarrassments; whereas the attempt should be to establish a basis which shall secure equality among the states, create an enlightened constituency, meet the wants of the country as it progresses and endures for ages, and leave the states to accommodate themselves to it. A basis which attempts to adjust present inequalities and embarrassments, which are, and can be, only temporary, and rests upon the present condition of the states, and aims to arrange their present interests, never can, and never ought to succeed. The true course is for Congress to look beyond the present, take a survey of the country in its rising greatness, establish a basis founded on that survey, and present it to the people. When so presented, we do not believe any narrow, selfish, present state interest, or ignoble state pride, will deter this patriotic and magnanimous nation from adopting it.

The proposition which seems now to be prominent is to make suffrage the basis, with the only qualification that the voter shall be a male, twenty-one years of age. This would be so unequal at the present time, and so unjust to several states, that if it receives the requisite two-thirds vote in Congress, it can never obtain the approval of three-fourths of the states. But there is an unanswerable objection to this basis, and we do not believe there are three states which would adopt it. As we said in our paper last week: "If suffrage is made the basis of representation in Congress, with the only qualification that a voter must be a male, twenty-one years of age, suffrage will be run into the ground and ultimately destroyed, carrying with it our institutions which rest upon it. For every state, being anxious to have as many representatives in Congress and votes for President as it can, will, to obtain that object, make as many voters as it can. This will create a strife among the states to increase voters, and the consequence will be, that everything in the country, or which



may come into it, in the shape of a man twenty-one years of age, will be made a voter, and thus so dilute and cheapen suffrage as to render it valueless and odious, and ultimately destroy it."

The only possible way, in our judgment, to establish suffrage as a basis of representation, is to give it the educational qualification, the value and advantages of which we have above endeavored to show. With that qualification, suffrage may, safely and beneficially, be made the basis of representation.

We close this article by asking our readers to carry their thoughts forward, and take a view of this country a few years hence, when these proposed amendments, having been adopted, they shall form a part of our Constitution, and the nation shall be moving and acting under them. The present mass of ignorant and uneducated voters will then have nearly or quite passed away.

Every voter will be, to some extent, an educated man. He will be able to read his own ballot, and will have sufficient intelligence to form his own judgment of the questions and candidates before the people.

The only language spoken will be the English, the language of the country. We shall hear no foreign languages around the polls.

Every man, without regard to race or color, having the requisite qualifications, will deposit his ballot.

Schools for English education will be spread over the country. There will not be thousands, yea, tens of thousands, of children, as there are now, out of school. Parents will not need urging to send their children to school, but strive to place them there. The nation will have but one language, and we shall be one people. Republicanism will command the homage of the world.

The statesmen of this Congress and the people of this generation will fill pages of history like those which our fathers of 1787 now fill

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[It is but justice to say that we are indebted to the Hon. Samuel A. Foot, of this village, for the preceding article, and we commend it to the careful consideration of our readers.—ED.]—*Geneva Courier*, March 28, 1866.

No. LXX.—Vol. 1, p. 405.

*Constitution of Reformed Church.*

*Letter from Hon. Samuel A. Foot.*

GENEVA, August 5, 1867.

REV. ELBERT S. PORTER, D.D.

DEAR SIR:—In answer to the request contained in your letter of the 1st inst., that I would prepare an article for the *Christian Intelligencer* on the legal effect of dropping the word "*Dutch*" from the name of our church, and resuming its original and true name, "Reformed Church," allow me to remark, that this aspect of the proposed measure was presented and considered by the General Synod at its late session in this village.

In the course of a series of observations which I made on that occasion, in favor of presenting to the Classes a short, simple proposition to resume our original, and, as I called it, "*baptismal*" name, I stated, in general, what I will now repeat more fully, namely, that no embarrassment could arise from any legal consequences which would follow the measure; for our *church* (and under that word are included our doctrines, usages, polity, and ecclesiastical associates), like all other churches in this country, is a voluntary association, and entirely at liberty, as is any other voluntary association for social, scientific, or business purposes, to assume whatever name it may think proper, and to alter and change it when and as often as it may please.

This voluntary ecclesiastical association of ours, called our church, has adopted for its own guidance a constitution, or in other words, a body of rules and regulations, to aid and direct the associates in conducting their affairs. The obligation of obedience to this constitution is wholly voluntary, and the effect of disobedience is exclusion from the association. It is consequently manifest that our church, having unlimited control over its name, and acting in accordance with the provisions of its constitution, may alter or discard entirely its present name, and adopt a new one; and since it never has, until the action of the late Synod, by any formal or authoritative act, declared what its

name is or shall be ; and since, too, it has been known and called by divers names for some years past, there cannot be even a shadow of doubt that it has a perfect right to discard this foreign patronymic "*Dutch*"—which, if it ever was appropriate, is now wholly inapplicable to us—and resume our true name, and thus remove an obstruction to our expansion, enterprise, and usefulness.

But irrespective of our name as a voluntary association, and to enable us to hold and control property, we asked the Legislature to incorporate our highest ecclesiastical court. The request was granted, and our General Synod was incorporated by the name of "The General Synod of the Reformed Protestant Dutch Church." Neither the franchises conferred on this corporation by the Legislature nor the rights or duties of the corporators will be changed or affected by our church resuming the name of the "Reformed Church." While we are the same voluntary association, or in other words, the same church, and our highest court is a General Synod, the act of incorporation will continue in full force, and every right and duty under it remain unimpaired. If the Legislature should pass an act declaring that the incorporation called and known as "The General Synod of the Reformed Protestant Dutch Church," shall hereafter be called and known as "The General Synod of the Reformed Church in America," such mere alteration of the name would neither alter nor impair any corporate right or duty. As I have already said, if the Classes shall approve of the act of the General Synod, and the measure in contemplation shall be perfected, there will be no legal necessity of changing the corporate name of our General Synod. There will, however, be a propriety in doing it, and with that view, the late Synod appointed a committee of distinguished professional gentlemen to take that matter in charge.

A few words in regard to our congregations, their acts of incorporation, and the church edifices and other property which they own.

Here again the corporate rights and duties of these congregations will not be affected by the action of the church in rectifying its name. But if any of them shall wish, or it shall be thought desirable, to conform their corporate names to the true name of the church, it can easily be done in two ways :

*First.* Any congregation may for itself ask the Legislature for an act allowing them to conform their corporate name to the true name of their church.

Or, *second.* A general law can be passed allowing all our churches to do so.

At any rate, it is no obstacle to our escaping from the "*Dutch*" cloud which shuts us out from the glorious day of Christian expansion and enterprise.

Affectionately and cordially yours,

SAMUEL A. FOOT.

# INDEX TO VOLUME II.

## A.

ADAMS, John Q., 287.  
 ADDRESS on agriculture, 310-345—  
 on circulation of Bible, 119—on col-  
 onization, 109-371—on dedication  
 of cemetery, 335—on conversation,  
 63—on duties of educated men and  
 women of America, 318—on the  
 true pursuit of a lawyer, 122—on  
 raising flag on church, 406—on  
 death of William Kent, 404.  
 AGRICULTURE, address on, before  
 agricultural society of Seneca, 310  
 —before St. Lawrence County Agri-  
 cultural Society, 345.  
 ALFRED, his diary, 469—his wound  
 and the surgical operation, 475.  
 ANTI-MASONRY, 60.  
 ARGUMENT on conflicting testimony,  
 52—on trial of Strang, 45—on con-  
 stitutionality of General Banking  
 Law, 125—on constitutionality of  
 canal law, 294—on constitutionality  
 of legal-tender notes, 431.  
 ASSASSINS of Lincoln, trial of, 479.

## B.

BALDWIN, Theophilus, 339.  
 BALLOT, purity of, 228.  
 BANKING Law, General, 125.  
 BANKRUPT Law, 219.  
 BANK of United States, renewal of  
 charter, 61.  
 BARNARD, Daniel D., 175.  
 BIBLE, circulation of, 119.  
 BOARD of Education, 116.  
 BRECKENRIDGE, Rev. John, 118.

## C.

CAMPBELL, John, 268.  
 CANAL Law, constitutionality of,  
 294.

CANAL from Boston to Hudson River,  
 27.  
 CARROW, Isaac, 207.  
 CEMETERY, dedication of and ad-  
 dress on, 335.  
 CEYLON, trial by jury in, 29.  
 CHURCH, raising flag on, 406.  
 CLAY, Henry, memory of, 308.  
 CLINTON, De Witt, nomination of, 5.  
 COLONIZATION, address on, 109-371.  
 CONFISCATION of rebel property,  
 437.  
 CONFLICT of testimony, argument on,  
 52.  
 CONSTITUTION of 1846, opposition to,  
 274.  
 CONTRABANDS and Pacific Railroad,  
 425.  
 CONVERSATION, a branch of educa-  
 tion, 63.  
 COOPER's Naval History, 237.  
 COPYRIGHT, international, 268.  
 CORPORATIONS and constitution, 125.  
 COURT of Errors, valedictory on,  
 275.  
 CUTTING, Francis B., 164.

## D.

DAVIES, Charles, 292.  
 DECLINE of country in some particu-  
 lars, 322.  
 DIARY, my, at Quebec, 11.  
 Duties of American educated men and  
 women, 318.

## E.

EDUCATED men and women, duties  
 of, 318.  
 EDUCATIONAL progress, 291.  
 ELECTION, Presidential, of 1844,  
 243.  
 EMANCIPATION, effect on white labor,  
 428.



## F.

FENELON, 332.  
 FINANCIERS, letters from, 434.  
 FLAG on church, address on, 406.  
 FOOT, Ebenezer, biographical notice of, 269—John, memorial of, 407—Samuel C., funeral of, 431.  
 FREEDMEN and Pacific Railroad, 425.  
 FRELINGHUYSEN, Theodore, 243.  
 FULTON Ferry, 216.

## G.

GENERAL banking law, 125.  
 GRAVE, lessons of, 340.  
 GRIFFIN, George, 193.  
 GUARANTY of Republican form of government, 491.

## H.

HENRY, Patrick, 281.  
 HOME, Anglo-Saxon, 327.  
 HUDSON River, navigation of, 24.  
 HUNT, Ward, 127.

## I.

INTERNATIONAL copyright, 268.

## J.

JOHN, memorial of him, 407.

## K.

KENT, James, 6-8-9-193—William, address on his death, 404.  
 KIRKLAND, C. P., 127.

## L.

LAWYER, pursuit of a true, 122.  
 LECTURE on mercantile character, 83—on value of system in occupations of life, 277—on duties of educated men and women of America, 318.  
 LEGAL-tender notes, validity of, 431.  
 LIBERIA, independence of, 276.  
 LINCOLN, letter to, 430—his re-election, speech on, 473.

## M.

MANN, Abijah, jun., 176.  
 MARIAM, letters of, to her parents, 19.  
 MEMORIAL of John, 407.  
 MERCANTILE character, 83.  
 MILITARY camp, location of, 427.  
 MUTINY, Commander Mackenzie, 242.

## N.

NEW England Society, 105.  
 NOMINATION for Assembly, 359.

## O.

OGDEN, David B., 175.

## P.

PARENTS, duty of, 331.  
 PATTERSON, Geo. W., 174.  
 POLITICS, 359.  
 PRESIDENTIAL election of 1844, speech on, 243—of 1860, speech on, 402—of 1864, speech on, 473.  
 PROGRESS of our country, 318.  
 PUNDERSON, William J., 339.

## Q.

QUEBEC, 11.

## R.

RAILROADS, taxation for building of, 315.  
 REBELS, confiscation of their property, 437.  
 REBEL states, position and reconstruction of, 480.  
 RED school-house, 339.  
 REFORMED Church, name of, 502.  
 REPUBLICAN form of government, 484—guaranty of, 491.  
 REPUBLICAN party, reasons for joining it, 359.  
 REVUE Encyclopedique, 27.  
 RUGGLES, Samuel B., 176.

## S.

SAMUEL C., death and funeral of, 421.  
 SCHOOL-HOUSE, old red, 339.  
 SELDEN, Joseph D., 6.  
 SLAVERY, Dred Scott's case, report on, 372—pamphlet on, 379.  
 SPEECH at Albany, in 1821, on nomination of delegates to constitutional convention, 6—at Millstone, N. J., on presidential election of 1844, 243—of 1860, 402—of 1864, 473.  
 SPENCER, Ambrose, 6-9.  
 STRANG, trial of, argument on, 45.  
 SUFFRAGE, American standard of, 492.  
 SYSTEM, value of, 277.

## T.

TARIFF of 1828, 47.

TAXATION to build railroads, 315.  
TEACHERS of American youth,  
332.  
TEMPERANCE, prohibitory law, 344.  
TEXAS, annexation of, 248.  
THOUGHTS, control of, 289.

## V.

VAN BUREN, Martin, re-election of, to  
Senate, 37.  
VAN RENSSELAER, Stephen, 6-8.

VAN VECHTEN, Abraham, 6-10.

## W.

WARD, SAMUEL, 208.  
WASHINGTON, George, 280.  
WILSON, W. D., 437, 458.  
WOMEN'S rights, report on, 370.

## Y.

YOUNG, Samuel, 178.















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